Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1121

AMERICAN BROADCASTING COMPANIES, INC., CBS INC., and NATIONAL BROADCASTING COMPANY, INC.,

Petitioners,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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SUBJECT INDEX

Page

Opinions Below 1

Jurisdiction 2

Question Presented 2

Statute Involved 2

Statement of Case 3

Reasons for Granting the Writ 8

1. The Decision Below Is in Direct Conflict With Decisions of the Seventh and District of Columbia Circuits Which Hold That Union Discipline of Supervisor-Members for Performing Supervisory Duties During a Strike Violates § 8(b)(1)(B) of the Act 8

2. The Decision Below Raises an Important Question of Federal Labor Law Which Should Be Settled by This Court 10

Conclusion 13

INDEX TO APPENDICES

Page

Appendix A. Decision of Administrative Law Judge ..... App. p. A-1

Appendix B. Decision and Order of National Labor Relations Board B-1

Appendix C. Decision of Court of Appeals C-1

Appendix D. New York Typographical Union No. 6, International Typographical Union, AFL-CIO *and* Daily Racing Form, a Subsidiary of Triangle Publications, Inc., 216 N.L.R.B. 896 (1975) .. D-1

Appendix E. Chicago Typographical Union No. 16 *and* Hammond Publishers, Inc., 216 N.L.R.B. 903 (1975) E-1

TABLE OF AUTHORITIES CITED

Cases — Page

Booster Lodge No. 405, I.A.M. v. NLRB, 412 U.S. 84 (1973) 11

Chicago Typographical Union No. 16, 216 N.L.R.B. 903 (1975) 5

Chicago Typographical Union No. 16 v. NLRB, No. 75-1320 (D.C. Cir., June 21, 1976); petition for cert. filed, 45 U.S.L.W. 3385 (U.S. Nov. 16, 1976) (No. 76-688) 9

Florida Power & Light Co. v. I.B.E.W., Local 641, 417 U.S. 790 (1974) 4, 5, 6, 7, 8, 10, 11, 12

I.B.E.W., Local 134 v. NLRB, 487 F.2d 1143 (D.C. Cir. 1973) 12

International Brotherhood of Boilermakers v. Hardeman, 401 U.S. 233 (1971) 11

New York Typographical Union No. 6, 206 N.L.R.B. 294 (1973), reconsidered and affirmed, 216 N.L.R.B. 896 (1975) 5, 6

NLRB v. Allis-Chalmers Manufacturing Co., 388 U.S. 175 (1967) 11

NLRB v. Boeing Co., 412 U.S. 67 (1973) 11

NLRB v. Granite State Joint Board, Textile Workers Local 1029, 409 U.S. 213 (1972) 11

Scofield v. NLRB, 394 U.S. 423 (1969) 11

Wisconsin River Valley District Council of Carpenters v. NLRB, 532 F.2d 47 (7th Cir., 1976) .. 8

Rules

Supreme Court Rules, Rule 19 2

Statutes	Page
Labor Management Relations Act of 1947, Sec. 8 (b)(1)(B) (29 U.S.C. § 158(b)(1)(B))	2, 4, 5, 6, 7, 8, 9, 10
Labor Management Relations Act of 1947, Sec. 10(e) (29 U.S.C. § 160(e))	6
Labor Management Relations Act of 1947, Sec. 10(f) (29 U.S.C. § 160(f))	6
United States Code, Title 28, Sec. 1254(1)	2

IN THE

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No. .....

AMERICAN BROADCASTING COMPANIES, INC., CBS INC., and NATIONAL BROADCASTING COMPANY, INC.,

Petitioners,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioners pray for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit which denied enforcement of an order of the National Labor Relations Board (hereinafter "Board").*

Opinions Below.

The decision and recommended order of the administrative law judge is set forth in Appendix A hereto. The decision and order of the Board, reported at

*Petitioners are informed that the Board will file a petition for a writ of certiorari to review the same judgment on or before February 22, 1977.

217 NLRB No. 159, is set forth in Appendix B hereto. The decision of a divided panel of the court of appeals which denied enforcement to the Board's order, with Judge Moore dissenting, is not yet reported and is set forth in Appendix C hereto.

Jurisdiction.

The judgment of the court of appeals was entered on November 22, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), and in accordance with Supreme Court Rule 19.

Question Presented.

Does a labor union violate § 8(b)(1)(B) of the Labor Management Relations Act, as amended, by disciplining through substantial fines and blacklisting those supervisor members and managerial members who perform solely their normal supervisory and managerial duties including grievance adjusting and collective bargaining during a strike by said union against their employer?

Statute Involved.

Section 8(b)(1)(B) of the Labor Management Relations Act of 1947, as amended, (hereinafter "Act") 29 U.S.C. § 158(b)(1)(B) provides:

> "It shall be an unfair labor practice for a labor organization or its agents to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances. . . ."

Statement of Case.

In March of 1973, Respondent, Writers Guild of America, West, Inc. (hereinafter "Guild") commenced a four month economic strike against Petitioners (hereinafter the "Networks") and others.* In anticipation of and during the course of this strike, the Guild attempted, by means of pervasive and widely-publicized written and oral threats of fines and blacklisting, to coerce various supervisory and management personnel who were members of the Guild to cease performing their regular supervisory and managerial functions, including grievance adjusting and collective bargaining during the strike. These supervisory and management personnel are hereafter called "supervisor-members." Prior to and during the strike, the Guild prohibited supervisor-members from resigning their membership in the Guild.

During the course of the strike supervisor-members were required by the Networks to cross Guild picket lines and otherwise to perform their normal supervisory and managerial duties, which they did. These duties included grievance adjusting and actual collective bargaining. The supervisor-members were not members of any bargaining unit represented by the Guild nor were they covered by the collective bargaining agreement between the Networks and the Guild which expired

*The Guild also struck employer-members of the Association of Motion Picture and Television Producers, Inc. ("Association") and various independent film production companies. The Association was one of the charging parties before the Board and intervened in the enforcement proceedings before the court of appeals seeking enforcement of the Board's order. Petitioners are informed that the Association will file a petition for a writ of certiorari to review the judgment of the court of appeals on or before February 22, 1977.

prior to the strike. During the strike, supervisor-members did not perform any rank-and-file struck work. The Guild's threats against the supervisor-members were followed by disciplinary trials and the imposition of substantial fines.

Petitioners filed unfair labor practice charges alleging violations by the Guild of § 8(b)(1)(B) of the Act. Complaints issued against the Guild alleging violations of § 8(b)(1)(B) and a hearing was held before an administrative law judge on said complaints. He determined that when the Guild prevented or sought to prevent the Networks' supervisor-members from performing work in their managerial and supervisory capacities during the strike, the Guild restrained and coerced the Networks in the selection of their representatives for the purpose of collective bargaining and adjusting grievances in violation of § 8(b)(1)(B) of the Act. (App. A at 46-48). In reaching this conclusion, he distinguished *Florida Power & Light Co. v. I.B.E.W., Local 641*, 417 U.S. 790 (1974) where a bare majority of this Court held that "unions did not violate § 8(b)(1)(B) of the Act when they disciplined their supervisor-members for *performing rank-and-file struck work*." 417 U.S. at 813. [Emphasis supplied.]

The Board adopted the findings of fact and decision of the administrative law judge and additionally held that the Guild's threats of discipline also violated § 8(b)(1)(B). (App. B at 3). The Board's decision does not elaborate its reasoning but it is quite clear that the Board did not regard *Florida Power & Light, supra,*

as controlling. Rather, the Board relied on and cited two subsequent Board decisions to sustain its finding of § (8)(1)(B) violations in the instant case: *New York Typographical Union No. 6*, 206 N.L.R.B. 294 (1973) reconsidered and affirmed in light of *Florida Power & Light Co.*, 216 N.L.R.B. 896 (1975); *Chicago Typographical Union No. 16*, 216 N.L.R.B. 903 (1975), *enforced*, No. 75-1320 (D.C. Cir., June 21, 1976); *petition for cert. filed*, 45 U.S.L.W. 3385 (U.S. Nov. 16, 1976) (No. 76-688). These two Board decisions are set forth respectively in Appendices D and E hereto.

In *Florida Power & Light*, the Court had stated:

> "The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of 8(b)(1)(B) *only when that discipline may adversely affect* that supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." 417 U.S. at 804-05. [Emphasis supplied.]

The Board interpreted the Court's language as follows:

> "We believe that the adverse future effect which the Supreme Court referred to as violative in Florida Power is as likely to occur, regardless of a union's professed reasons or intent, if a supervisor-member is disciplined after having performed only his normal supervisory duties or if he is disciplined after having engaged in contract interpretation. In the latter case it is the supervisor's future manner of contract interpretation

which is likely to be influenced and in the former case it is the supervisor's actual future performance of supervisory duties, including grievance adjustment or collective bargaining, which is likely to be influenced. In either case the employer has been restrained in the selection of his 8(b)(1)(B) representative." 216 N.L.R.B. at 897, App. D at 6 (Footnote omitted). See also App. E at 4-8.

Board Member Fanning dissented in the instant case (App. B at 5) for the reasons set forth in his dissent in *New York Typographical Union No. 6, supra* (App. D at 7-20), to wit: that in light of *Florida Power & Light*, § 8(b)(1)(B) must be read to permit unions to discipline supervisor-members for working during a strike against their employer despite the fact that they perform no rank-and-file bargaining unit work but only their normal supervisory duties, and despite the fact that such normal duties include grievance adjusting and collective bargaining. In Fanning's view, the nature of the work actually performed by supervisor-members, whether rank-and-file bargaining unit work or regular supervisory duties, including grievance adjusting and collective bargaining, is legally irrelevant to adjudication of an alleged violation of § 8(b)(1)(B).

In the instant case the Board's petition for enforcement and the Networks' petition for review of the Board's order were filed with the court of appeals pursuant to § 10(e) and § 10(f) of the Act, 29 U.S.C. §§ 160(e), (f), respectively. A divided panel of the court of appeals denied enforcement of the Board's order substantially for the reasons set forth in Member Fanning's dissent. Notwithstanding the facts as found by

the Board, the court held "that the Board, as a matter of law incorrectly applied Section 8(b)(1)(B) to the instant case. . . ." (App. C at 3) Dissenting, Judge Moore would have enforced the Board's order because he found that the majority's reliance on *Florida Power & Light* was misplaced in that this Court "made it clear [therein] that there is a definite cleavage between supervisory work and 'rank-and-file' work . . .," and because "[t]he Court of Appeals should not usurp the function of the ALJ and Board unless there is complete absence of evidence to support its findings." (App. C at 6).

REASONS FOR GRANTING THE WRIT.

1. The Decision Below Is in Direct Conflict With Decisions of the Seventh and District of Columbia Circuits Which Hold That Union Discipline of Supervisor-Members for Performing Supervisory Duties During a Strike Violates § 8(b)(1)(B) of the Act.

In *Florida Power & Light Co. v. I.B.E.W., Local 641, supra,* supervisor-members who crossed their union's picket lines during a strike to perform struck bargaining unit work were disciplined by their union. The Court framed a narrow question for decision:

> ". . . whether the unions committed unfair labor practices under § 8(b)(1)(B) when they disciplined their supervisor-members for crossing the picket lines and performing rank-and-file struck work during lawful economic strikes against the companies." 417 U.S. at 792.

It reached an appropriately narrow holding:

> "[W]e hold that the respondent unions did not violate § 8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing rank-and-file struck work." *Id.* at 813.

Subsequent to *Florida Power & Light,* the Seventh and District of Columbia Circuits have reviewed and enforced Board orders finding § 8(b)(1)(B) violations where unions disciplined supervisor-members who performed their normal supervisory duties against their unions' wishes. Both courts regard the nature of the work performed by the supervisor-members as being the key legal issue in § 8(b)(1)(B) adjudications.

In *Wisconsin River Valley District Council of Carpenters v. NLRB,* 532 F.2d 47 (7th Cir., 1976),

the court upheld the Board in its determination that union discipline of supervisor-members for performance of their supervisory duties can coerce and restrain their employer in selecting them as grievance adjusters or collective bargainers. Such discipline can and did, as the Board so found, adversely affect the supervisor's conduct of his § 8(b)(1)(B) duties. The Seventh Circuit stated:

> ". . . Florida Power and its antecedents teach that the focus of a Section 8(b)(1)(B) inquiry rests on the nature of the supervisors' duties when discipline is imposed. Where supervisors cross picket lines to perform regular supervisory duties, union discipline violates Section 8(b)(1)(B) since it tends to deprive the employer of its supervisors' services—including their § 8(b)(1)(B) services—and because the supervisors would reasonably anticipate that union discipline would also be imposed if future performance of their § 8(b)(1)(B) functions did not meet with union approval." 532 F.2d at 53.

Similarly, in *Chicago Typographical Union, No. 16 v. NLRB,* No. 75-1320 (D.C. Cir., June 21, 1976), *petition for cert. filed,* 45 U.S.L.W. 3385 (U.S. Nov. 16, 1976) (No. 76-688) the District of Columbia Circuit enforced the Board's order on the basis of the Board's opinion reported at 216 N.L.R.B. 903 (1975) (App. E). In *Chicago Typographical Union, No. 16,* the union disciplined supervisor-members who worked behind picket lines during a lawful strike but performed supervisory duties including grievance adjusting. The court thus sustained the

Board's finding of a violation of § 8(b)(1)(B) and the Board's interpretation of *Florida Power & Light*.

By affirming the Board's decisions, the Seventh and District of Columbia Circuits have clearly and unmistakably rejected Member Fanning's interpretation of *Florida Power & Light* to the effect that the nature of the work actually performed by supervisor-members who are disciplined for working in violation of union orders is irrelevant to the determination of a § 8(b)(1)(B) violation. The Second Circuit's decision herein by adopting Member Fanning's dissent as a matter of law is thus directly in conflict.

2. The Decision Below Raises an Important Question of Federal Labor Law Which Should Be Settled by This Court.

The question presented has not been decided by this Court and until it is it will remain an open and persistently recurring question with which both sides to labor disputes must contend and somehow govern their conduct.

The Court in *Florida Power & Light* reached the narrow holding that "unions did not violate § 8(b)(1)(B) . . . when they disciplined their supervisor-members for performing *rank-and-file struck work*." 417 U.S. at 813. [Emphasis supplied]. In his dissenting opinion in *Florida Power & Light*, joined by three other Justices, Justice White stated: "I do not read the Court to say that § 8(b)(1)(B) would allow a union to discipline supervisor-members for performing supervisory or management functions, as opposed to customary rank-

and-file work, during a labor dispute." 417 U.S. at 815, n.2. Therefore, it is clear that the question presented herein has not been decided by this Court.

The circumstances under which the question arises is the common, everyday economic strike wherein some supervisors of the struck employer may also be members of the striking union. The striking union, in order to maintain solidarity and to increase its economic pressure, fines members who work during the strike, and now, under the principle established by this case, will no doubt fine supervisor-members who, even though they work, do not perform bargaining unit work. With good reason, the ability of a union legally to levy fines and discipline its members has in the past been and continues to be an issue in the developing federal labor law which the Court regards as a most important one.* Such ability is directly related to the strength of a union's solidarity and its economic muscle during the traditional economic strike. However, until the instant case this legal ability has been limited to fining and disciplining those members who are either in the bargaining unit or who, even though supervisor-members, cross picket lines solely to perform struck bargaining unit work.

The instant case establishes a new and heretofore unexpected and previously unsought economic weap-

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*See *NLRB v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967); *Scofield v. NLRB*, 394 U.S. 423 (1969); *International Brotherhood of Boilermakers v. Hardeman*, 401 U.S. 233 (1971); *NLRB v. Granite State Joint Board, Textile Workers Local 1029*, 409 U.S. 213 (1972); *Booster Lodge No. 405, I.A.M. v. NLRB*, 412 U.S. 84 (1973); *NLRB v. Boeing Co.*, 412 U.S. 67 (1973); *Florida Power & Light, supra.*

on.* Under its principle, workers are allowed to tell their supervisors and managers who may retain some form of union membership, "Now that we are on strike, you can't work either. If you continue working, by hiring and firing and otherwise performing your normal supervisory and managerial duties which include grievance adjusting and collective bargaining, you will receive a substantial fine." It is submitted that such a dramatic change in the traditional economic weapons available to unions is one not contemplated by the Act or by federal labor policy.

The clear distinction between rank-and-file work and normal supervisory duties which is strongly indicated by the Court's narrow holding in *Florida Power & Light, supra,* is firmly rooted in articulated federal labor policy and is founded upon the traditional and well accepted conduct of parties to labor disputes. The Board, management and labor thus require guidance from this Court as to whether and to what degree the nature of the work performed by supervisor-members during a strike remains legally relevant. The important question presented herein concerning the legitimacy as an economic weapon of union fines against supervisor-members for performing their normal supervisory duties should be decided by this Court.

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*Indeed, the unions involved in *Florida Power & Light, supra,* fined *only* those supervisor-members who performed bargaining unit work, 417 U.S. at 798, and conceded that supervisors who cross picket lines to perform supervisory duties are immune from discipline. *I.B.E.W., Local 134 v. NLRB,* 487 F.2d 1143, 1157 (D.C. Cir. 1973) (opinion on rehearing *en banc*).

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

CHARLES G. BAKALY,

Attorney for Petitioners:
American Broadcasting Companies, Inc., CBS Inc., and National Broadcasting Company, Inc.

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February 11, 1977.

APPENDIX

APPENDIX A.

Decision.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc.	Case No. 31-CB-1203-2
Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc. Columbia Broadcasting System, Inc. National Broadcasting Company, Inc.	Case No. 31-CB-1223
Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc.	Case No. 31-CB-1316
Writers Guild of America, West, Inc. and American Broadcasting Companies, Inc. Columbia Broadcasting System, Inc. National Broadcasting Company, Inc.	Case No. 31-CB-1313

Writers Guild of America, West, Inc.	)	
	)	Case No.
and	)	31-CB-1355
QM Productions	)	

Philip R. LeVine, Esq., for the General Counsel.

Charles K. Hackler, Esq., and *Gerald Goldman, Esq.* (*Levy, VanBourg & Hackler*), and *John A. Mendonsa, Esq.*, Los Angeles, Calif., for the Respondent.

Harry J. Keaton, Esq. (*Mitchell, Silberberg & Knupp; Andrew B. Kaplan, Esq.*, on the brief); David *G. Miller, Esq.* (*Loeb and Loeb*), Los Angeles, Calif.; for the Charging Party AMPTP.

Richard N. Fisher, Esq. (*O'Melveny & Myers; Raymond P. Herman, Esq.*, on the brief), Los Angeles, Calif. for the Charging Party Networks.

DECISION

Statement of the Case

SIDNEY J. BARBAN, Administrative Law Judge: This matter was heard at Los Angeles, California, on several dates from May 21 until November 26, 1973.[1] The hearing was closed by an order dated January 25, 1974.

1. Procedure

Upon a charge filed in Case No. 31-CB-1203-2, on March 8, against Writers Guild of America, West, Inc. (herein "Respondent") by Association of Motion Picture and Television Producers, Inc. (herein

[1]All dates herein are in 1973, unless otherwise noted.

"AMPTP"), and a charge filed in Case No. 31-CB-1223, on April 4, against Respondent by American Broadcasting Companies, Inc. (herein "ABC"), Columbia Broadcasting System, Inc. (herein "CBS") and National Broadcasting Company, Inc. (herein "NBC") (herein jointly "the Networks") the Regional Director for the Thirty-first Region, on April 18, issued an Order Consolidating Cases and a Consolidated Complaint against Respondent, which was amended by the issuance of a Consolidated Amended Complaint on May 23. Respondent filed timely answers. Hearing on this complaint was concluded on June 13.

Upon a charge filed in Case No. 31-CB-1313, on July 11, by the Networks, and a charge filed in Case No. 31-CB-1316, on July 16, by AMPTP against the Respondent, the Regional Director, on July 25, issued an Order consolidating those two cases and a Consolidated Complaint. Respondent filed timely answer. By a Joint Motion dated August 2, the parties requested that the four cases be consolidated, and the record reopened for further hearing. This motion was granted by order dated August 10.

Upon a charge filed in Case No. 31-CB-1355, on September 5, against Respondent by QM Productions (herein "QM"), the Regional Director, on September 20, issued a complaint in that case. Respondent filed timely answer. By motion dated November 9, General Counsel requested that Case No. 31-CB-1355 be consolidated for the purposes of hearing and decision with the four cases previously consolidated. On November 13, an Order to Show Cause why this motion should not be granted was issued. The motion was granted at the hearing held on November 26. Thereafter,

General Counsel filed a motion dated December 11, to substitute a Second Consolidated Amended Complaint for all complaints previously issued in the above-captioned cases, to which Respondent filed an answer dated December 13. Finally, in lieu of further hearing in these matters, all parties submitted a stipulation of facts with exhibits attached, dated December 17. By Order dated January 25, 1974, General Counsel's motion to substitute the Second Consolidated Amended Complaint for all prior complaints was granted and the complaint and the answer thereto were received into the record, and the stipulation of facts, with specified exhibits, was received, the hearing in this proceeding was closed, and date set for receipt of briefs.[2]

2. Allegations

The various complaints issued in this proceeding, cumulated in the Second Consolidated Amended Complaint (herein referred to as the complaint), allege that Respondent violated Section 8(b)(1)(B) of the Act by restraining and coercing employer-members of AMPTP, and NBC, CBS, ABC, and QM in the selection of their representatives for collective bargaining and the adjustment of grievances by threatening to discipline and by disciplining certain persons and classes of persons employed by the aforesaid employers, such persons and classes of persons being, it is alleged, members of Respondent, and supervisors within the meaning of the Act for their respective employers and

[2]Exhibit numbers have previously been assigned to all formal papers with the exception of my Order of January 25, 1974 and General Counsel's telegraphic response thereto, received February 4, 1974. The Order is hereby received as General Counsel's Exhibit 14L, and the response is received as General Counsel's Exhibit 14M.

representatives or potential and likely representatives for their employers for the purposes of collective bargaining or the adjustment of grievances within the meaning of the Act.

Respondent's answer to the complaint, while admitting certain allegations, denies the alleged unfair labor practices.

Upon the entire record in this case, from observation of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Respondent, and the Charging Parties,[3] I make the following:

Findings and Conclusions

I. Jurisdiction

AMPTP is an association located at Los Angeles admitting to membership firms engaged in the production and distribution of motion picture and television films, and existing, in part, for the purpose of negotiating, executing, and administering collective-bargaining agreements on behalf of its employer-members with the bargaining representatives of their employees, including the Respondent. AMPTP members collectively annually sell and ship from their studios in California directly to points outside that state motion picture films and other products valued in excess of $50,000.

ABC, CBS, and NBC each have offices in various locations throughout the United States including California, and each derives gross revenues in excess of

[3]After the decision of the Supreme Court in *Florida Power & Light Co. v. I.B.E.W. Local 641, et al.*, [417 U. S. 790] 86 LRRM 2689, the parties were invited to file briefs, no later than August 9, 1974, with respect to the impact of that decision upon this case and did so. I have also issued a separate order correcting some inaccuracies in the transcript.

$100,000 from sales to customers located outside California, and each annually purchases goods valued in excess of $50,000 directly from suppliers located outside California.

QM, a corporation with its principal place of business in Burbank, California, engaged in the production and distribution of motion picture and television films, annually sells such films valued in excess of $50,000 directly to customers located outside California.

Respondent's answer admits, and it is found that the Association, and its members through the Association, CBS, NBC, ABC, and QM are employers engaged in commerce within the meaning of the Act.

Respondent's answer admits, and it is found that Respondent is now and at all times material has been a labor organization within the meaning of the Act.

II. Preliminary Statement of Facts and Principal Issues

Respondent has for some time represented persons engaged in writing functions employed by members of AMPTP, the Networks, and certain independent producers such as QM. As a result of prior bargaining, Respondent was a party to collective-bargaining agreements with AMPTP, for its members, with the Networks, and with QM due to expire in 1973. The AMPTP agreements were terminated effective March 4, by notice from the Respondent pursuant to the terms of the agreements. On or about that same date, Respondent engaged in a strike against the AMPTP and its employer members which continued until June 24, during which time Respondent picketed some of those employers at various times. Beginning on or

about March 29 and continuing until July 12, Respondent engaged in a strike against NBC, CBS, and ABC, and maintained picket lines at the premises of each of them. Beginning on or about March 4, and continuing until March 17, Respondent engaged in a strike against and maintained a picket line at the premises of QM.

In February and thereafter, Respondent adopted and distributed to all its members some 31 strike rules (later reduced to 30, as discussed hereinafter), in anticipation of the strike which ensued. In essence these rules (hereinafter considered in some detail) forbade members of Respondent to do any work of any sort for employers on strike, or to cross picket lines to go upon the premises of such employers without specific permission of Respondent. Respondent took other action, and caused certain publicity to issue designed to impress upon its members the consequences of violating these Rules.

At the times material to this proceeding, Respondent's membership included a substantial number of persons engaged in performing functions other than writing for their employers in the industry. Because of their ability to perform in more than one capacity, such as producing, directing, or writing, these persons are referred to as "hyphenates". It would appear that many of these, if not most, have not engaged in creative writing for years. Respondent asserts, however, that even when their principal function is other than writing, the nature of the work is such that they must and do engage in some writing. The hyphenate's principal work function (other than writing) will sometimes be referred to herein as his (or the) "primary function."

General Counsel contends that these hyphenates occupy supervisory positions within the meaning of the Act, and are representatives, or potential and likely representatives, for their respective employees [*sic*] for the purposes of collective bargaining or the adjustment of grievances.

The record indicates that Respondent was particularly concerned that its hyphenate members should not cross picket lines or go to work during the strike. Members who were in a withdrawn status prior to the strike were reactivated. Most of the hyphenates appear to have held only associate membership in Respondent at the time. Those hyphenates questioned indicated their understanding that, as associate members, they had no right to vote on the adoption of the Respondent's strike rules, and did not do so. With one exception, the hyphenates also testified to the same effect with respect to the vote authorizing Respondent to strike. Herbert Wright, an associate producer, testified that at the strike vote meeting he was given a card permitting him to vote on authorization of the strike, but was not given an opportunity to vote on the strike rules.

Respondent's Constitution and By-Laws in evidence (G.C. Exh. 12a) are confusing on the issue. Those in effect until December 1972 provide in Article IV, Section 6, paragraph 1, that associate members shall not have the right to vote, while Article XIV, Section 8 (last paragraph) states certain restricted circumstances in which associate members may vote on strikes. In the latter part of the booklet are proposed changes in the Constitution and By-Laws. Assuming that these were in effect at times material to this case, Article

IV, Section 7(b) provides that associate members under certain conditions (different from those noted above) might vote on strikes. However, it is not shown that any hyphenate involved herein satisfied these latter conditions. Counsel for Respondent, during the disciplinary hearing concerning hyphenate-member Coles Trapnell, asserted that Associate Members could not vote on the strike rules as such.

At least one of these hyphenate-members attempted, prior to the strike, to resign from membership in Respondent. In accordance with the provisions of the Constitution and By Laws, Respondent rejected the attempted resignation, "in view of current contract negotiations and the importance to the Guild of maintaining effective communication with its membership," advising that the member must maintain his membership at least during the period of negotiations and probably for 6 months thereafter. This became known to other hyphenates prior to the strike. It was stipulated by the parties that at all times material this refusal to permit any member to resign from membership during the pendency of collective-bargaining negotiations, and for 6 months thereafter, was the policy of Respondent.

From approximately April 6 through about November 8, Respondent served charges for violation of strike rules and notice of disciplinary hearing upon at least 31 hyphenate-members. At least 15 such hearings have been held and penalties imposed on no less than 10 of those charged. It is indicated that other trials were contemplated at the time of the receipt of the filing of the last stipulation of facts by the parties and that appeals were pending from penalties imposed. Other action appears to have been stayed pending disposition of this proceeding.

The major issues to be resolved are the following:

1. The alleged status of the various hyphenates as supervisors and representatives for collective bargaining and the adjustment of grievances. This was considerably litigated. However, in its brief, Respondent, as hereinafter noted, appears to concede that hyphenates performing many functions in dispute (other than that of story editor) are supervisors within the meaning of the Act, and may adjust grievances of employees other than writers represented by Respondent.

2. Whether various actions of alleged restraint and coercion of hyphenates by Respondent designed to compel the hyphenates to cease work for the struck employers, and Respondent's actions in charging, trying, and penalizing such members for going to work during the strike, violated Section 8(b)(1)(B) of the Act. Also whether Respondent's refusal to allow such hyphenates to resign from membership in these circumstances violated the Act.

3. Whether certain issues in this matter should be deferred to arbitration under the parties' collective-bargaining contracts.[4]

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[4]In its answer to the complaint Respondent asserted as three "Separate Special" defenses the claims that 1) by the terms and provisions of the various bargaining agreements, the employers had waived the right to designate Respondent's members as representatives for collective bargaining or the adjustment of grievances during the strike; 2) by the terms and provisions of the various bargaining agreements, the employers had agreed Respondent's members, including supervisors, might refuse to work during the strike "and be subject to Guild discipline for crossing picket lines or working for struck employers . . ."; and 3) that the two issues set forth should be deferred to arbitration. In its original brief at p. 19, Respondent has withdrawn its first two special defenses. The third is considered hereinafter.

III. The Supervisory Issues

The General Counsel contends that persons performing the following functions are supervisors within the meaning of the Act, and are representatives or potential or likely representatives of their employers for the purposes of collective bargaining or the adjustment of grievances:

1. *Executive Producer, Producer, and Associate Producer.* The producer has the primary responsibility for the production of films for motion pictures or for television. This responsibility begins with the idea or concept for the film or the series; includes involvement in the budget for the film; the employment of a writer or writers who develop and write the scripts under the supervision of the producer or others associated with the producer; the employment of a director and cast for the film, as well as other employees necessary to make the film (cameraman, etc.); the selection of sets, locations; the performance of executive functions during the filming; and the performance of executive functions in the post-production stages, after filming.

The producer has substantial responsibility and authority in adjusting grievances between directors and craft employees, directors and actors and actresses, between two or more actors or actresses, and in other similar situations. Producers also have responsibility and authority to adjust grievances involving writers, as in the case of disputes between writers and story editors. In one instance in which a dispute arose as to whether a commitment had been made to a free-lance writer, the producer involved decided that no commitment had been made. The testimony shows that

if the producer had decided that a commitment had been made, that would have been binding and resolved the dispute. Producers also make the initial determination in situations in which there may be dispute over the assignment of screen credits to writers, although this is a complex matter, subject to extensive review. In situations in which the film is being shot on a distant location, the producer may be involved in negotiating or agreeing to short-term agreements with local unions where the services of local craft members are required, and possibly adjusting, or attempting to adjust, local jurisdictional conflicts.

In general, an executive producer supervises one or more producers (this seems to be particularly the case in the television industry where an executive producer may have responsibility for several series or projects at the same time, each with its own producer). The associate producer is an assistant to the producer. Without distinguishing among them in detail, it is clear on this record that persons occupying these positions in the motion picture or television industries have the authority to hire, terminate, and responsibly direct other employees, and to adjust employee grievances, or to effectively recommend such action, and are thus supervisors within the meaning of Section 2(11) of the Act. Respondent does not contest this finding or conclusion (brief, pp. 7-8), except, as noted, in respect to the producer's role in adjusting grievances of writers. (Brief, pp. 4, 7-8). As found above, however, I find that producers, executive producers and associate producers do or potentially may adjust grievances involving writers.

Respondent contends that persons performing the functions considered here, as well as those occupying

positions described hereinafter, as a normal part of their work, perform writing functions coming within the jurisdiction of Respondent. This contention will be considered hereinafter in a separate section of this decision devoted to this issue.[5]

The record indicates approximately 80 hyphenate-members of Respondent in the position of Executive Producer, Producer, or Associate Producer employed by the charging parties in this matter (including major members of AMPTP). Among them, the following were charged by Respondent with violation of its strike rules: Philip Barry, Hugh Benson, Cy Chermack, Robert Cinader, Barry Crane, Jon Epstein, Andrew J. Fenady, Stephen Heilpern, Ron Honthaner, Leonard Katzman, David Levinson, Roger Lewis, James McAdams, John T. Mantley, Thomas L. Miller, Martin Ransohoff, William Roberts, Albert Ruddy, Herman S. Saunders, David Victor and Herbert Wright.[6] Of these, Chermack, Cinader, Crane, Epstein, Levinson, Saunders, Victor, Ruddy, Benson, and Roberts were brought before trial panels set up by Respondent. Some of these were disciplined by Respondent as noted hereinafter.

2. *Directors.* Persons in this category are in direct charge of the principal photography of the film. They

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[5]Respondent adduced considerable testimony concerning certain hyphenates who are legally employed by their own wholly-owned corporations, which corporations furnish the hyphenates' services to employers involved in this proceeding. This is referred to in the record as a "loan out" agreement. The record is convincing and I find that such "loaned-out" employees occupy the same positions as more conventionally employed persons doing the same work and are treated the same by the employers here involved. It is noted that Respondent makes no point of this in its brief.

[6]There are two or three additional producers noted on G.C. Exh. 3 as having received charges who were not listed in the parties' post-hearing stipulation and for whom copies of the charges were not submitted.

hire or effectively recommend the employment of crew and actors, effectively direct such employees, and may discharge or effectively recommend the discharge of employees. They have authority to and do adjust grievances of such employees. It is found that persons performing the functions of director in the television and motion picture industries are supervisors and adjust grievances of employees within the meaning of the Act.

The record indicates approximately 15 hyphenate members of Respondent in this position employed by the charging parties (without duplicating those listed as producer-directors, or the like). Of these Respondent charged the following with violation of its strike rules: Philip Kaufman, Michael Crichton and Sam Peckinpah, Crichton was brought before a trial panel and was disciplined.

3. *Story editors, story consultants, script consultants, executive story editors, executive story consultants.* Although there may be some differences among these classifications, or in the requirements of the various employers for these positions, these job functions may be considered together for our purposes under the title of "story editor." The story editor is of principal assistance to the producer in the highly important functions of dealing with scripts and writers. The story editor may be, and frequently is, concerned with reading and acquiring scripts, interviewing writers and recommending them for hire (or otherwise), directing and supervising writers in the development of ideas and the preparation of scripts, and in recommending that writers not be retained. On a television series, the story editor may participate with the producer in the initial determination of any dispute over screen credits.

He also may serve as a buffer between management and the writer, as in ameliorating a writer's distress over material that has been rewritten. Thus one executive story editor testified that because he is the first person in the studio that the writer meets, and due to the story editor's close association with the writer, "if he [the writer] has a problem, more likely than not, he will come to me because it is usually a problem with a producer, or things aren't working out." During the disciplinary trial of one in this group, Coles Trapnell, it was indicated that he supervised story analysts employed by the employer.

In all of these functions it is found the story editor is expected to and does use individual judgment, initiative and responsibility. On the basis of the entire record, it is found that those persons in the television and motion picture industries performing the functions of story editor, story consultant, script consultant, executive story editors, and executive story consultants are supervisors and adjust grievances of employees within the meaning of the Act.[7]

Of approximately 15 hyphenate-members of Respondent in this position employed by the charging party in this matter. [*sic*] Respondent charged Robert Blees, Frank Paris, and Coles Trapnell with violation of Respondent's strike rules and brought them before a disciplinary trial board of Respondent.[8]

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[7]In *Metro-Goldwyn-Mayer Studios, et al*, 7 NLRB 662, at 696, the Board at the request of Screen Writers Guild, Inc., found story editors in the motion picture industry to be executives and supervisors and excluded them from a unit of writers sought by that union.

[8]It is noted that Respondent made no effort during these disciplinary hearings to show that these men did any writing

(This footnote is continued on next page)

4. *Other classifications.* The General Counsel argues that hyphenates in other classifications, who received Respondent's strike rules, or were threatened with charges or were charged with violation of those rules, or were tried at disciplinary hearings for violation of those rules, are also supervisors and representatives, or potential representatives, of their employers for collective bargaining or the adjustment of grievances. The record indicates that these persons do occupy executive or management positions. However, my analysis of the record shows that all of the persons revealed by the record who were both charged *and* tried by Respondent for violation of the strike rules are contained in the classification previously considered, except Jerome Bredouw, and the charges against Bredouw were dismissed after trial, and, so far as this record shows, no penalty was assessed against him. In the circumstances it would serve no useful purpose to consider such other classifications in which those hyphenates are employed.

IV. The Writing Function

Respondent argues, in essence, *inter alia,* that all of the above categories normally and regularly engage in writing within the jurisdiction of the Respondent, and that it should be inferred, therefore, that those hyphenate members of Respondent who went to work during the strike must have engaged in such writing. This is largely disputed by witnesses for the General

or performed any functions during the strike which were not normal to the primary function of the classification. During the Trapnell hearing, indeed, Respondent's Counsel stated, typical of Respondent's position in these hearings, that "[i]t is immaterial [to Respondent's charges against Trapnell] what type of services were being rendered, whether they were writing services or other services."

Counsel and defendants at the disciplinary hearings who testified that they do not in the performance of their primary function for their employers normally or regularly perform writing coming within Respondent's collective-bargaining agreements and specifically did not do so during the strike. This requires, at the outset, some consideration of the functions of writers represented by the Respondent under the various agreements.

Referring to the 1970 Theatrical and Television Basic Agreement between Respondent and the employer members of AMPTP, it is noted that the parties recognized that members of the Guild could be employed in capacities other than as writers. It is provided in Article 14, paragraph A, of that Agreement, referring to "writers in non-writing capacities," that where such individual is employed "to render services in a capacity or capacities other than as a writer," those "services shall not be subject to this Basic Agreement."[9] It is further provided that where such an individual is also employed as a writer (as defined in the agreement), such services shall be performed under a separate agreement providing for compensation as set forth in the agreement.

Article 14, paragraph B of that Agreement also provides in pertinent part, that "A person employed as a writer for a series whose duties include for that

[9]Although the heading of Article 14 would indicate that it applies only to the "television" side of the industry, it is noted that Article 1B1. of the Agreement, which defines the term "writing" in the "theatrical" side of the industry, also adopts the language of Article 14.

Article 1A 11. of the 1970 Networks basic agreement also states that with limited exceptions the agreement "shall not nor is it intended to cover the services of Producers, Directors, Story Supervisors, composers, non-writing capacity. . . ."

series interviewing other writers, suggesting story ideas or script changes to other writers, or recommending approval of material submitted by writers, shall be subject to this Basic Agreement (excluding Executives, Executive Producers, and Producers; and also excluding persons who are employed as bona fide Associate Producers, who do not perform services as a writer for the series and where the above duties of such persons are incidental to their primary duties)."

The term "writer" as defined in Article 1, paragraph B.1.a., and paragraph C.1.a. of that Agreement, includes, in pertinent part, a person "who performs services . . . in writing or preparing . . . literary material or making revisions, modifications, or changes in such literary material . . . , provided, however, that any writing services described below performed by Producers, Directors, Story Supervisors (other than as provided in Article 14 hereof), . . ., or other employees, shall not be subject to this Basic Agreement and such sources shall not constitute such person a writer hereunder: (a) Cutting for time, (b) Bridging material necessitated by cutting for time, (c) Changes in technical or stage directions, (d) Assignment of lines to other existing characters occasioned by cast changes, (e) Changes necessary to obtain continuity acceptance or legal clearance, (f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography, (g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.), (h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding story or teleplay." These latter eight exceptions were referred to during the hearing, and will be referred to herein, as "A to H functions."

There is no dispute that a person writing an original story, story outline, treatment, or finished script for television or motion pictures is performing writing functions within the meaning of the contract between the Respondent and the various employers. Some persons who have written such scripts may thereafter, if they have the capacities, be engaged to produce those scripts or direct the photoplay made from such a script. In such cases, such director, or the producer would have a separate agreement with the employer covering such sources, in accordance with Respondent's collective-bargaining agreement. Some producers and directors who have the capacity to write may have separate agreements with their employers covering possible writing assignments even in situations in which the employer does not actually require them to write.

An issue arises, however, as to what writing is done on scripts after the writer has delivered a finished script which has been accepted by the employer, and who does such writing. Again there seems no question that numerous changes are made in some scripts prior to principal photography, during principal photography, and thereafter before release of the film. Many of these changes, perhaps most, involve A to H functions, and may be made by producers or directors or story editors whether or not they are members of the Respondent. It is indicated that prior to the strike, other changes of a more substantial nature might be made in the script when the producer or the director desired. Such changes would be made by persons qualified under the applicable contract between Respondent and the employer.

Respondent argues, however, that even when management executives and supervisors perform functions

which have been excluded from the bargaining agreements, such as A through H functions, they are nevertheless performing writing functions within the jurisdiction of Respondent. The argument misses the point. It is not necessary to decide here what constitutes writing, or even what different segments of the industry might consider writing as such. The important point is that when these executives and supervisors perform those functions excluded from the Respondent's bargaining agreements they thereby perform functions which the parties have acknowledged do not constitute work reserved to Respondent's non-hyphenate members under the agreements, but rather are accepted as a normal part of the duties and responsibilities of the executives and supervisors (as hereinabove discussed) employed by the employers involved.[10]

V. Strike Related Activities

1. *Respondent's strike rules*

In February, the Respondent promulgated and distributed to all its members, including hyphenates occupying positions discussed above, a list of 31 RULES FOR CONDUCT OF MEMBERS DURING A STRIKE. These received considerable publicity in the local papers and the trade press. Fifteen of these strike rules relate, in whole or in part, to prohibitions against writing for struck employers, or the submission of literary material to such employers (Rules 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 18, 23, 25). Various

[10]In some of the disciplinary trial transcripts, it is noted that Respondent's counsel argued vigorously that functions excluded from Respondent's agreements, such as A through H, were excluded because the economic strength of the employers in bargaining. However, this is the classic way in which management and supervisory rights and functions are differentiated from rank and file functions under a bargaining agreement.

rules with which we are not particularly concerned here deal with such matters as the use of fictitious names (Rule 15), acts of agents (Rules 17, 20), individual negotiations by members (Rule 21), penalties provided by Respondent's Constitution and By-Laws (Rule 29), and enforcement of the rules by committees (Rule 31). The remaining rules in pertinent part, are as follows:

1. Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.

12. All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.

13. Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film . . . should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

19. A member may not, during the course of a strike, conduct negotiations with a struck producer for financing the production of any of his literary material or scripts, or for his participation in such production in any capacity.

22. A member is chargeable with knowledge of all strike rules and regulations, . . . circularized through the mail to the membership and of any strike information made known . . . through . . . trade papers, newspapers, radio broadcasts or telecasts. . . .

24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts to writing.

26. The term "member" encompasses anyone admitted to the membership rolls of the Writers Guild of America, both West and East, and classified as either active or inactive, associate, withdrawn or suspended, whether in good standing or bad.

27. No member may be relieved of the responsibility for the payment of any fine, or from any disciplinary action resulting from any infraction of strike rules by offering his resignation from the Guild. Membership in any guild or union is not a voluntary association of parties but a binding contract between them which cannot be abrogated unilaterally by either party except under provisions of the Guild constitution or state or federal law. It should be noted that fines levied for infringement of strike rules are collectible in a suit at law.

28. The Guild shall have the authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any member found guilty of refusal to perform picket duty shall be fined not less than $100 per day for each day of such refusal to perform.

30. No member shall work with any individual, including a writer-executive who has been suspended from Guild membership by reason of his violation of strike rules, or has been found by the Council to have violated strike rules, in the event no disciplinary action was instituted against such person.

By means of meetings and publicity, and through personal contact, memos, telegrams and letters, Respondent emphasized and confirmed that these rules would be enforced against the hyphenate-members.[11] The hyphenate-members were particularly vulnerable to pressure under rule 30 because in their primary work as producers, directors, story editors, and executives, they would be unable to effectively function in the future if writer-members of Respondent refused to work for or with them. In telephone conversations with certain of the hyphenates, agents of Respondent emphasized this consequence should the hyphenate cross the picket line to work. The wife of one hyphenate-member was assured that Respondent would end her husband's rather distinguished career by not permitting

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[11]One such communication was a telephone conversation between Herbert Wright, a producer, and Alan Griffiths, Assistant Executive Director of Respondent. During the hearing, Respondent asserted a variance between Wright's testimony and his affidavit held by the General Counsel and further requested that I accept Wright's affidavit as substantive evidence under the rule of evidence in California. See *Starlite Mfg. Co.* 172 NLRB 68, 71-3. The issue is not mentioned in Respondent's briefs. I have carefully considered Wright's testimony and his affidavit, and I credit Wright's testimony as given at the hearing. Treating Wright's affidavit as substantive evidence would not affect the findings made herein.

writers to work with him if he crossed the picket line. On April 14 during the strike, Respondent issued a press release, which received wide publicity, concerning the filing of charges against "five writer-producers", Jon Epstein, Cy Chermak, Herman Saunders, David Victor and Jack Webb, for "crossing a picket line for the purpose of going to work for a struck company." The release stated that in addition to other possible penalties, if they were convicted, these men would, "according to Guild officials", "appear on a 'Roll of Dishonor,'" and "be listed in Guild publications 'in perpetuity so that Guild members for years to come will never forget.'". The Guild official assertedly "characterized those members guilty of scabbing as 'pariahs who have betrayed their colleagues.'"

After the issuance of the original consolidated complaint in this matter Respondent, on April 30, rescinded Rule 30, and by letter to all its members, dated May 7, advised:

> Old Rule 30 provided that no member shall work with any individual suspended or disciplined because of violating strike rules. The Guild's position has been, and remains, that it will press disciplinary action as vigorously as the law and good union principles permit, against every member guilty of violating strike rules. Because the old rule could be misconstrued to mean that the Guild was maintaining an improper sanction, a matter of anathema to this Guild, the Board of Directors rescinded old Rule 30 at its regular monthly meeting of April 30, 1973. This action was taken voluntarily, in the belief that ample disciplinary measures remain available to trial committees, including penalties of fines, expulsion from membership and other sanctions, and with the conviction that even in the pursuit of strike discipline, members of the Guild do not wish to be a part of an action which carries the odious implications of a "black list."

2. *Pressures on hyphenates by employers and others*

As previously noted, the hyphenates here involved in most cases had personal services agreements with their employers to perform in their primary capacities as directors, producers, story editors, and the like. It would also appear that many were members of labor organizations representing them in those capacities, some of which organizations, if not all, apparently held bargaining contracts with the employers.

Prior to the strike, various employers parties to bargaining contracts with Respondent sent communications to hyphenates they employed insisting that they come in to work to perform their regular functions other than writing in the event of a strike. The following letter, in pertinent part, from Twentieth Century-Fox Film Corporation is typical:

> We intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.
>
> If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render services for us in any capacity or you fail to

report for picket duty. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful and the Guild's threat of fines, censure, expulsion and blacklisting is unenforceable.

* * *

We expect you to fulfill your contractual obligations to us as a supervisor[12] and report to work notwithstanding any picket lines or other attempt to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and which is legally sustained.

Prior to sending these letters, the members of the AMPTP and the networks had determined that they would not require the hyphenate-members of Respondent to write during the strike.

In addition to these letters, it appears that the hyphenates were placed under certain pressure to perform by the unions holding contracts with the employers covering the principal function for which the hyphenate was employed. Thus, according to a counsel for the Directors Guild, at the time of the Respondent's strike, the Director's Guild held a no-strike contract

[12]At this point some employers inserted the specific function, e.g., Director, Producer, etc., for which the individual was engaged by that employer.

with employers of hyphenates working as directors, assistant directors, and unit production managers, and felt obligated to inform its members that if they refused to render services covered by the bargaining agreement and the hyphenate's personal service contracts (other than writing), they would be subject to suits for large damages and other penalties.[13]

3. *Enforcement of Respondent's strike rules*

As has been previously noted, Respondent, by issuance of the strike rules, by a meeting with the hyphenate members prior to the strike, by communications and publicity, emphasized that it would take disciplinary action against the hyphenates who went to work during the strike in any capacity. The hyphenates held meetings of their own to determine the proper course to follow.

Some hyphenates went to work. The record shows that a number of the hyphenates (I would assume most of them, if not all) advised their employers that they would do no writing, but would only perform services under their personal services contracts as producers, directors, etc., as the case might be. There is evidence that Respondent was informed of this.[14]

[13]This statement was made during the disciplinary trial of John Michael Crichton. There are indications of similar action by the Producers Guild, and legal action taken against that union by Respondent.

[14]Frank R. Pierson, a producer, advised Respondent that he had a personal services contract to produce a film which he intended to perform during the strike, that the script was finished and no more writing services would be performed. Pierson offered to provide and did later provide a copy of the final shooting script so that Respondent "could compare it with the shooting continuity . . . to see whether . . . anyone had indeed done any writing." Herbert Wright, after informing Respondent that he would work only as an associate producer

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During the various disciplinary trials of the hyphenates who worked during the strike, Respondent, as noted above, for the most part professed little or no interest in what kind of work was done during the strike, and presented no proof that the work done by the hyphenates was covered by the recently terminated contracts held by Respondent.[15] The evidence is that the hyphenates who worked during the strike performed the normal functions of the primary positions for which they were employed prior to the strike, e.g., director, producer, story editor, etc., or in some other executive position, and exercised the authority appertaining to such positions.[16]

From April 6 through November 8, 1973, Respondent notified more than 30 hyphenate members that

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and was not employed to write, nor would he write, was advised that he would be in violation of the strike rules if he went to work. Crichton, who performed as a director during the strike, also informed Respondent that he had ceased writing on the project and testified that Respondent could confirm this. During his disciplinary hearing it appears that Crichton's employer did provide means for confirming this. Paris, an executive story editor informed Respondent that he would work in an executive capacity. Trapnell, also an executive story editor, did work as an executive during the strike.

[15]It was stipulated at the hearing in this matter that counsel for the Respondent who participated in the disciplinary hearings instituted by Respondent would testify that he took the position at such hearings that the hyphenates charged "are subject to discipline for crossing Respondent's picket line without regard to wnether they cross the picket line for the purpose of performing bargaining [unit] services for a struck employer or not. And that the charges will properly lie for crossing the picket line even if the person charged has given assurances to a representative of [Respondent] that he is not and will not perform any [writing] services for the struck employer."

[16]E.g., Robert A. Cinader, during his disciplinary hearing, referred to the adjustment of a dispute between a cameraman and an actor and others; Producer Albert S. Ruddy testified to hiring a lead actor; others asserted their general function and authority as supervisors and in the adjustment of grievances.

they had been charged with violation of Respondent's strike rules and set hearings on the charges. The only rules alleged to have been violated were rules 1, 12, 13 and 28. Most hyphenates were alleged to have violated rules 1, 12 and 13; some only rules 12 and 13; some rules 1, 12, 13 and 28; some rules 12, 13 and 28, and one only rule 12. Typical of the language of the charges is the following:

* * *

> NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Orders and Sections 1, 12, 13, and 28 of the Rules for the Conduct of Members during a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which is attached hereto.
>
> Specifically, you are charged with: (1) having crossed the Guild's picket lines at CBS Studio Center, during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; (2) having during the months of March, April, May and June 1973, rendered services for Columbia Broadcasting System, Inc., a company against whom the Guild was at such times on strike; and (3) refusing to perform picket duties during the strike after having been requested to do so by representatives of the Guild.[17]

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[17]Testimony by Respondent's officials in the disciplinary hearings makes clear that passes would not have been granted to hyphenates to go in to work as producers, directors, or

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The record contains the transcript of disciplinary trials of 15 of those charged. The charges against at least one of these was dismissed. From June 25 through September 28, 1973, Respondent's Board of Directors issued the following disciplinary penalties against 10 hyphenate members, in addition to costs of the hearing: Two were expelled from membership and fined $50,000 each; one was expelled from membership and fined $10,000; one was suspended from membership for 2 years and fined $10,000; one was suspended for 2 years and fined $7,500; one was suspended for 3 years and fined $5,000; one was expelled from membership and fined $2,000; one was expelled and fined $100; and one was suspended for 2 years and fined $100.[18] These penalties received wide publicity in the local press and trade papers. The appeals of nine of these men has been voted upon by Respondent's membership at a special meeting and the penalties were drastically reduced. Apparently all remaining actions with respect to discipline of hyphenate-members for working during the strike are now being held in abeyance pending resolution of these cases.

VI. The Requests for Arbitration

During the course of the strike, by letter dated April 28, 1973, Respondent made certain requests for arbitration upon AMPTP and the Networks, with car-

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the like, even if requested. It is also noted that some hyphenates did agree to perform picket duty at some places notwithstanding they were crossing other picket lines, which, understandably, tended to create some confusion.

[18]The 10 hyphenates penalized for violation of Respondent's strike rules were Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John Mantley, Herman Saunders, David Victor, Robert Cinader and Barry Crane. No disciplinary hearing transcript for Crane appears in the record.

bon copy to the Board's Regional Director. The following letter to AMPTP sets forth the basis for the requests:

> Gentlemen:
>
> Reference is made to the Writers Guild of America 1970 Theatrical and Television Film Basic Agreement ("Agreement"). A dispute exists between the Guild on the one hand and the Association its member companies on the other hand concerning the interpretation of the terms of the Agreement and their application and effect with respect to the effect of the current strike by the Guild on the employment contracts of its members and the claimed right of yourself and the companies to complain of the Guild's enforcement of its strike rules with respect to all its members, including those employed in other capacities. The Guild submits the following questions to grievance and arbitration:
>
> 1. Whether by virtue of the provisions of said Agreement, and particularly Article 7, all contracts of members of the Guild with employer companies as to whom the Guild is on strike have been suspended, including the contracts of all members no matter in what capacities they have been employed; and
>
> 2. Whether by virtue of the provisions of said Agreement, and particularly Article 7, the definition of writer, and other provisions, the Association and the Companies have waived the right to designate or select members of the Guild as representatives of employers for the purposes of collective bargaining or the adjustment of grievances and the right to complain of discipline threat-

ened or imposed by the Guild on any of its members.

This will constitute a notice of grievance in accordance with the provisions of the Agreement with you and your member companies that the Guild submits the dispute to grievance and arbitration pursuant to the provisions of Articles 10, 11, and 12 of the Agreement. In that connection, the Guild is willing to waive the grievance step and proceed directly into arbitration.

By letters dated May 14, and May 18, AMPTP and the Networks replied denying Respondent's grievance and request for arbitration. The pertinent part of the AMPTP letter, in substance similar to the Network's [*sic*] reply, is as follows:

This is in response to your letter of April 28, 1973, in which you claimed that there is a dispute between the Guild and the Association and its member companies concerning the interpretation and application of the terms of the . . . ("Agreement") in connection with the current strike of the Guild.

* * *

In view of the legal nature of the questions raised by you, and by virtue of the fact that your letter was obviously an effort to make a record for purposes of the imminent National Labor Relations Board proceeding in which a complaint has been issued against the Guild, your letter was carefully reviewed by our attorneys.

Your request to arbitrate the foregoing issues is hereby denied for the following reasons:

1. The Grievance and Arbitration procedure which you seek to invoke is no longer in effect

between the Guild and the members of the Association as to any matters arising subsequent to March 5, 1973. By your letter of February 2, 1973, you terminated the collective bargaining agreement containing these provisions effective March 4, 1973. Additionally, after we had reached an impasse by letter of March 27, 1973, we advised you that effective April 2, 1973, our member companies intended to effectuate certain changes in working conditions including that they would no longer apply the Grievance Arbitration provisions of the Agreement, except as to matters arising before March 5, 1973. You were given an opportunity to bargain about this intended change but failed to do so and on April 2, 1973, said change was implemented.

2. There is no colorable claim that could be made for the applicability of the Grievance and Arbitration Procedure of the Agreement to the two issues raised by you even if such Grievance and Arbitration Procedure were still available. The effect of Article 7 upon the status of individual employment cannot possibly be subject to grievance or arbitration, inasmuch as the status of such agreements is expressly excluded from grievance and arbitration. There is not a word in the entire Agreement which would support the position taken in the second issue which you have posed. You have heretofore advanced this theory unsuccessfully to the General Counsel of the National Labor Relations Board. You will no doubt urge it again in the impending hearing on the complaint issued by the General Counsel.

* * *

In Respondent's answer to the complaint, it raised three affirmative defenses based upon the above. In the first two "special defenses," Respondent asserted, almost *in haec verba*, the two positions set forth above, which would have required the Board to interpret the agreement, or find the defenses irrelevant. In its original brief, as previously noted, Respondent has withdrawn these two defenses. In Respondent's "Third Separate Special Defense," Respondent recites the fact that it has requested the Association and the Networks to arbitrate the two issues set forth, and concludes: "In view of the pendency of the above described arbitration proceedings, Respondent respectfully requests that the issues raised in the Second Consolidated Amended Complaint be deferred to arbitration and the Board retain jurisdiction pending the arbitral decision thereof."

Analysis and Conclusions

Under Section 8(b)(1)(B) of the Act it is an unfair labor practice for a labor organization "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." The Board, in a series of cases, some of which are discussed in *Florida Power & Light Co. v. IBEW Local 641, supra,* has previously held that action by a union to restrain or coerce the performance of duties by supervisors who were or might be selected by their employers for the purposes of collective bargaining or adjustment of grievances violates that section of the statute. Thus it has been held that union threats to discipline supervisors for allegedly violating bargaining agreements or asserted practices or policies of the union, charges brought by a union against such supervisors, trials

held, and penalties levied against them for contravening the purposes and directives of the union were prohibited by this section of the law, on the ground that such action subverted the loyalties the employer was entitled to expect from the supervisor in the performance of his functions and deprived the employer of the supervisor whom the employer had selected—or potentially might select—to represent the employer for purposes of collective bargaining or adjustment of grievances. In the two cases considered by the Supreme Court in *Florida Power & Light,* the Board had held that union discipline of union-member supervisors who had crossed union picket lines and performed rank and file struck work during the strikes involved there thus violated Section 8(b)(1)(B)). The Court of Appeals for the District of Columbia, which considered these cases, disagreed. As stated by the Supreme Court (slip opinion, p. 7, footnotes omitted):

> In a 5-4 decision, the court [of appeals] held that
>
> "[S]ection 8(b)(1)(B) cannot reasonably be read to prohibit discipline of union members—supervisors though they be—for performance of rank and file struck work," and accordingly refused to enforce the Board's Orders. Section 8(b)(1)(B), the court held, was intended to proscribe only union efforts to discipline supervisors for their actions in representing management in collective bargaining and the adjustment of grievances. It was the court's view that when a supervisor forsakes his supervisory role to do work normally performed by nonsupervisory employees, he no longer acts as a managerial representative and hence no longer merits any immunity from

discipline" 487 F.2d at 1157. We granted certiorari, 415 U.S. ...., to consider an important and novel question of labor law.

The Supreme Court itself affirmed the Court of Appeals by a vote of 5-4, holding that the legislative history of the pertinent amendments to the Act made it clear that in enacting Section 8(b)(1)(B), "Congress was exclusively concerned with union attempts to dictate to employers who would represent them in collective bargaining and grievance adjustment" (slip op. p. 13), and not with the general problem of the supervisor's conflict of loyalty as between his employer and his union. As the Supreme Court said (slip op. p. 14, emphasis in original):

> Nowhere in the legislative history is there to be found any implication that Congress sought to extend protection to the employer from union restraint or coercion when engaged in any activity other than the *selection* of its representatives for the purposes of collective bargaining and grievance adjustment. The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of §8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer.

The Court then noted that in the cases before it (*Florida Power & Light* and *Illinois Bell*) "it is certain that these supervisors were not engaged in collective bargaining or grievance adjustment, or in any activities related thereto, when they crossed union picket lines

during an economic strike to engage in rank and file struck work." (Slip op. p. 15)

The Court concluded, "for these reasons, we hold that the Respondent unions did not violate Section 8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing rank and file struck work." (Slip op. p. 23)

In coming to this conclusion, the Court also noted that the result was not inequitable, inasmuch as it derived from the options exercised 1) by the employers in recognizing the unions as representatives of these supervisors under the union contracts, and 2) by the supervisors in becoming and remaining members of the unions for their own benefit. As to the supervisors, the Court stated, in pertinent part (Slip op. pp. 21-22, citations omitted):

> There can be no denying that the supervisors involved in the present cases found themselves in something of a dilemma, and were pulled by conflicting loyalties. But inherent in the option afforded the employer by Congress, must be the recognition that supervisors permitted by their employers to maintain union membership will necessarily incur obligations to the union. . . . And, while both the employer and the union may have conflicting but nonetheless legitimate expectations of loyalty from supervisor-members during a strike, the fact that the supervisor will in some measure be the beneficiary of any advantages secured by the union through the strike makes it inherently inequitable that he be allowed to function as a strikebreaker without incurring union sanctions.

> The supervisor-member is of course not bound to retain his union membership absent a union security clause, and if, for whatever reason, he chooses to resign from the union, thereby relinquishing his union benefits, he could no longer be disciplined by the union for working during a strike. . . .
>
> In these cases, the supervisors' dilemma has been somewhat exaggerated . . . in *Illinois Bell,* the company did not command its supervisors to work during the strike and expressly left the decision to each individual. Those who chose not to work were not penalized and some were in fact promoted by their employer after the strike had ended. Those who did work during the strike but performed only their regular duties were not disciplined by the union. In *Florida Power,* the record does not disclose whether the supervisors crossed the picket lines at the company's request or not, but in any event, the union did not discipline those who did so only to perform their normal supervisory functions.

Similarly, in *N.L.R.B. v. San Francisco Typographical Union No. 21, etc. (California Newspapers, Inc.)* 486 F.2d 1347 (also relied upon by Respondent), where the Board had found the union there involved had violated Section 8(b)(1)(B) by disciplining supervisor-members for crossing the union's picket lines, the Court held that "the Board's broad interpretation of Section 8(b)(1)(B) . . . is an unjustifiable extension of the limited language of Section 8(b)(1)(B). Had the members elected to resign from the union, the power of the Union over them would have ended.

> [Citation omitted] But here the members remained in the Union, and therefore continued to be subject to their obligations as members." The Court also noted that although those disciplined were supervisors, "the Union did not punish them for exercising any management duty." (486 F.2d at 1349-50)

Compare *Scofield v. N.L.R.B.*, 394 U.S. 423, where, in the course of holding that Section 8(b)(1)(A) did not proscribe a union's enforcement of productivity ceilings through the discipline of members, the Supreme Court stated (at p. 430), ". . . Section 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members *who are free to leave the union and escape the rule.*" (Emphasis added.)

> In this case we are concerned with certain supervisory, executive, and managerial personnel (referred to as hyphenates) principally employed to perform functions *not* covered by Respondent's collective-bargaining agreements (which agreements provide for the conditions of employment and the recompense of writers who furnish certain writing services to the television and theatrical industries), but who are nevertheless members of Respondent and who on occasion may do work properly falling within the terms of those bargaining agreements. The case involves the attempts of Respondent to coerce and restrain those hyphenates from going to work in any capacity during the course of a strike by Respondent against the hyphenates' employers over the terms for renewal of Respondent's bargaining agreements. Respondent promulgated and distributed strike rules to all its members forbidding

the members to go to work in any capacity during the strike. These received wide publicity. These were further enforced by personal and written communications, and at Respondent's meetings with the hyphenates, to impress upon them that the strike rules applied to the hyphenates and would be enforced against them.[19] Some hyphenates who allegedly violated one or more of the strike rules were charged, tried before trial boards of Respondent, and when convicted were disciplined.

During this same period, Respondent also had and enforced a policy, well known to the hyphenates, under which Respondent refused to permit such hyphenate-members to resign from membership prior to or during the strike.

At the same time, many of the hyphenates, probably most, were obligated to perform their primary managerial and supervisory functions under personal service contracts with their employers. Prior to the strike the hyphenates were informed by their employers that they would be expected to fulfill their contracts and come in to perform their normal work during the strike. In some cases, perhaps most, these primary functions were also covered by collective-bargaining agreements with other labor organizations requiring that the hyphenates not engage in strikes. At least one or two such unions directed their hyphenate members to perform during the strike in accordance with that union's contract.

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[19]Originally one of the rules, later officially rescinded, provided for the perpetual ostracism of any hyphenate working during the strike, which would clearly have wrecked the further careers of such persons. The impact of the rule itself, as well as the indication of the implacable attitude which prompted it, were clearly coercive of the hyphenates' freedom of action.

It is clear, as has been found, that the normal performance of the hyphenates' primary functions involves the adjustment of employee grievances, and, in the case of producers on distant location, to engage in collective bargaining with labor organizations. Those hyphenates charged by Respondent with violation of its strike rules, who testified in this hearing or before Respondent's trial boards denied performing any writing function during the strike other than that which had been commonly agreed in the past to be permissible for hyphenates performing supervisory and managerial functions. Indeed, the employers had determined in advance not to require writing of the hyphenates who worked during the strike. Evidence was offered to Respondent by certain hyphenates to substantiate the fact that those hyphenates, though working during the strike, nevertheless did no writing. Respondent, indeed, points to no instance of any hyphenate doing any "rank and file" work during the strike. In its original brief, Respondent stated its position as follows, in pertinent part (Orig. brief pp. 11-12, emphasis in original):

> . . . we believe that the record here supports an inference that hyphenate Guild members who crossed picket lines necessarily performed services of a non-supervisory character which bring them within [the Court of Appeals' decisions in *Illinois Bell* and *California Newspapers*].
>
> . . . Virtually all of the hyphenate writers called as witnesses by General Counsel conceded that they performed only (a) through (h) writing functions which, upon their view, were not strike defeating because such services were outside the coverage of the Guild contract. . . .

. . . Rather, it is our contention that such writing falls within the prohibitions of [Respondent's strike rules] and that the scope of such rules was legally permissible. . . .

The permissible scope of the strike rules, as to hyphenates, can only be judged fairly in connection with the production activities of the struck employers which the Guild had the right to frustrate . . . the most critical service of the producers is the finding and participation in the hiring of writers . . . while this is a statutory supervisional function, nevertheless, in a strike situation the performance of this non-writing function requires the producer to be the active recruiter of strike-breaking writers. The average foreman union member in an industrial plant is not in a strike situation, normally called upon to act as the *principal recruiter of strike breakers.*

In order to perform under his producer contract, the hyphenate Guild member necessarily must place himself directly in direct opposition to the strike strategy of the Guild and, at the same time, be free from the normal discipline imposed upon strike-breakers. The matter of disloyalty arises from the continued performance of the hiring function itself.[20]

These arguments, however, do not meet the issue. The fact is that, according to the record, such writing as the hyphenates did during the strike was limited

[20]In its supplementary brief, Respondent states that while it considers the "record as a whole" supports a finding that "rank and file" work was done, its position is that *Florida Power* makes the finding "irrelevant" (Supp. brief p. 5).

to that commonly accepted in the industry as part of the managerial and supervisory function and thus was not rank and file work. I so find. Indeed, although a number of Respondent's strike rules forbade writing for struck employers, none of the hyphenates was charged with violating those rules. It was stipulated that Respondent's counsel, during the disciplinary hearings, was not concerned with what work the hyphenates did when working during the strike.

In its supplementary brief, Respondent argues that it would be difficult to determine in these cases what the supervisors did after they went to work during a strike, for the supervisors and employers would not likely cooperate. However, in the one instance in which Respondent's trial panel is shown to have requested evidence, it was supplied by the employer. In another instance the hyphenate supplied evidence voluntarily, without request. In one of the disciplinary trials there was testimony by a union member that when he returned to work after the strike, he found no writing that had been done by a hyphenate (with whom the member was closely associated) who had worked during the strike, the union member stating that he was satisfied that some writing had been done by an executive who was not a member of Respondent. From this it seems clear that if hyphenates working during the strike had performed rank and file work, Respondent had means for discovering it.

Though the evidence is sparse, the record indicates that during the strike, where the situation arose, the hyphenates dealt with grievances of employees who worked during the strike, or, in any event, were available to deal with such matters in their normal capacities when and if such grievances arose.

Further, it has long been established that an employer may legally employ replacements for striking employees during a strike (in union terminology "strikebreakers") see *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345. Thus action by managerial or supervisory employees in recruiting employees during a strike would manifestly fall within the normal functions of such persons. There is no evidence of which I am aware that any hyphenate performing as a producer during the strike (as argued by Respondent) recruited or hired a writer during the strike—for the most part the evidence is that such producers were involved with scripts already written and ready for production but if any such writer was recruited or hired by a producer, this was clearly a proper managerial or supervisory function.

Nor is it material, in the circumstances of this case, that by going in to work at managerial and supervisory functions during the strike, hyphenate-members frustrated Respondent's strike strategy, or provided the employers with more economic clout than they otherwise might have possessed. Respondent cannot deny the hyphenates the right to resign from membership, and thus be free of the obligations of membership, while at the same time argue that because the hyphenates continued to be members they cannot be "free from the normal discipline imposed upon strike breakers." It was well known among the hyphenates that Respondent would not permit them to resign prior to or during the strike. At least one hyphenate's attempt to resign from membership in Respondent during this period was rejected. It is, of course, not known how many hyphenates would have resigned if this had been an option available to them. It is inferred that at least those who went

back to work during the strike would have done so, and possibly others. The rights of the hyphenates and their employers are not reduced because the exercise of those rights might make Respondent's position more difficult.

The result of the strike would be of only problematical benefit to many of the hyphenates involved. Respondent's contracts did not cover the hyphenates' managerial and supervisory functions (as was the situation in *Florida Power*) and would have benefited the hyphenates only if they engaged in writing covered by the bargaining agreements. There was testimony from a number of hyphenates that they had done no substantial writing of such character for a considerable number of years. There is little indication that the hyphenates received other substantial benefits from their membership in Respondent, except that derived from being part of the writing community which provided significant contacts with writer-members of Respondent, a sense of pride in belonging to the organization, and, perhaps most important, providing the hyphenate with a wider range of capabilities and thus enhancing his usefulness to his employer.

It has been previously found that those hyphenates occupying the positions of Executive Producers, Producers, Associate Producers, Directors, Story Editors, Story Consultants, Script Consultants, Executive Story Editors and Executive Story Consultants, as considered hereinabove, are supervisors within the meaning of Section 2(11) of the Act selected by their employers to adjust grievances, and, in the case of the producer function, to negotiate agreements with labor organizations within the meaning of Section 8(b)(1)(B) of the Act. On the basis of the above discussion and the record as

a whole it is found that by issuing strike rules designed to compel such hyphenates from going to work during the strike called by Respondent, and by meetings, personal contacts, telegrams, and phone calls designed to restrain and coerce such hyphenates from going to work during the strike, Respondent restrained and coerced the hyphenates from performing managerial and supervisory services for their employers during the strike, including the adjustment of employee grievances and participation in collective bargaining, and thus coerced and restrained those employers in the selection of representatives for collective bargaining and the adjustment of grievances within the meaning of Section 8(b)(1)(B); that those hyphenates involved in this matter who worked during the strike performed managerial and supervisory functions including the adjustment of grievances on collective bargaining as required, and did not perform rank and file work; and that by charging, trying, and disciplining such hyphenates who worked during the strike in such circumstances, Respondent further coerced and restrained the employers in the selection of their representatives for the purposes of collective bargaining within the meaning of Section 8(b)(1)(B) of the Act. It is therefore found that Respondent, by the activities set forth above, violated Section 8(b)(1)(B) of the Act.

In coming to this conclusion, I have given careful consideration to Respondent's contention that the Supreme Court in *Forida Power*, not only disapproved of the Board's finding that a violation of Section 8(b)(1)(B) had occurred in those cases, but, by completely overturning the Board's rationale in those cases, in effect held that coercion, restraint and discipline of supervisor-members by a labor organization for working

during a strike cannot be held by the Board to violate the Act. I disagree. It is clear that Respondent's action in this case violated the plain meaning of the statute without the necessity of resort to statutory exegesis. To illustrate: A person performing the function of a director acts in a managerial or supervisory capacity, which normally includes the adjustment of grievances of actors, actresses, craft employees and others. One occupying the position of a producer normally has a similar capacity and similar duties with respect to employee grievances. In addition, if the film is being shot on distant location the producer has authority to negotiate on the spot agreements with local unions. Thus when Respondent prevented or sought to prevent, such hyphenate members from going to work in their managerial and supervisory capacities as producers and directors during the strike, Respondent obviously coerced and restrained their employers in the selection of those specific producers and directors for the purpose of collective bargaining and the adjustment of grievances of employees working during the strike within the plain meaning of the statute. Similarly, those persons employed as story editors or in like classifications perform executive functions normally, and appear to have done so during the strike, in which the record indicates they were engaged as supervisors and actual or potential representatives of their employers for the adjustment of grievances.[21] Respondent, by coercing or restraining persons in these classifications from going in to do their normal work thereby actually coerced and

[21] As previously noted, two executive story editors, Paris and Trapnell, appear to have worked as executives during the strike. According to the disciplinary transcript, Trapnell is a supervisor over story analysts who apparently did not strike.

restrained their employers from selecting those persons as the employers' representatives for the adjustment of grievances and for collective bargaining during the strike.

The General Counsel also contends that Respondent's rule restricting the right of hyphenate-members to resign from membership should also be found to violate the Act. This raises what seems to me a quite important and difficult issue, one which may well have different consequences for supervisors as distinguished from rank and file employees.[22] I do not, however, have to determine these matters in this case. The General Counsel did not allege this matter as a violation of the Act in his complaint, nor put it properly in issue during the hearing. In the circumstances, I do not pass upon the issue.

Lastly, I have carefully considered Respondent's contention that certain issues should be referred to arbitra-

[22]As to the rank and file employees, since they are compelled by law to accept labor organizations chosen by the majority in the unit, and may be compelled to join or assist such unions even if violently opposed to them, and to comply with their rules even if personally obnoxious to the employees involved, it may well be argued that such employees should be afforded reasonable opportunity at proper times to resign their membership in such organizations and escape the imposition of such rules. Some commentators who have considered the subject indicate that this is a likely direction of the law. See *Restrictions on the Right to Resign: Can a Member's Freedom to Escape the Union Rule Be Overcome by Union Boilerplate?*, 42 Geo. Wash. L. Rev. 397 (1974); 26 Vand. L. Rev. 837 (1973); *Union Disciplinary Fines and the Right to Resign*, 30 Wash. & Lee L. Rev. 664 (1973); 5 St. Mary's L. J. 176 (1973); 40 Geo. Wash. L. Rev. 330 (1971). There may be, as the Court of Appeals for the First Circuit has indicated, ". . . a limit of reasonableness beyond which a union may not be permitted to go in holding captive its members." See *N.L.R.B. v. Int'l Union, U.A.W.*, 297 F.2d 272, 276 (1961).

tion and the complaint in this proceeding be dismissed. I have determined that this contention should be denied for the following reasons:

1. The parties have not agreed that the issues presented by the complaint in this matter should be determined by arbitration. The bargaining agreements held by Respondent which expired on or about March 4, or shortly thereafter, contain no restriction upon Respondent's issuance of strike rules, or upon its right to restrain members to comply with its rules, or upon Respondent's right to discipline its members, or upon Respondent's right to strike when it did. Respondent, indeed, does not claim that there were any contractual provisions which forbade or approved of such actions. It does claim that there was a contractual provision which would have protected the hyphenates if they desired to respect Respondent's picket line.[23] The employers, on their part, refer to provisions of the agreements in support of their contentions that the agreements do not cover or apply to the functions performed by the hyphenates, and further that these provisions of Article 7 are specifically exempted from arbitration. There is no need to consider the merits of these contentions. We are not here concerned with whether there was agreement that these hyphenate-

[23]Section 2 of Article 7 in certain expired agreements provided, in pertinent part, that "If, after the expiration or other termination of the effective term of this Basic Agreement, the [Respondent] shall call a strike against any Company, then each respective current employment contract of writer members of [Respondent] (hereinafter . . . referred to as 'members') with such Company shall be deemed automatically suspended, both as to service and compensation, where such strike is in effect, and each such member of [Respondent] shall incur no liability for breach of his respective employment contract by respecting such strike call . . ."

members of Respondent could respect Respondent's picket lines or its strike call with impunity from action by the employers, but we are concerned with whether the Respondent may legally restrain and coerce the hyphenate-members from going to work, at the insistence of their employers, to perform functions not covered by Respondent's contracts, and whether Respondent may discipline such members for going to work in such circumstances. No contractual basis appears and Respondent points to none which would authorize an arbitrator to pass on such issues.[24]

Assuming, without deciding, that the employers had agreed to absolve Respondent's hyphenate-members of all liability for breach of their personal services contracts (which, as noted, the employers vigorously dispute), it does not follow, as Respondent argues, that the employers thereby agreed not to ask, direct, or insist that such members come in to work, or agreed that the employers would not select such members as their representatives for adjustment of grievances or collective bargaining, or that the employers agreed that Respondent could restrain or coerce the members not to work, or, if the members did come in to work at the employers' insistence, that Respondent could discipline the members for doing so.

2. There is substantial doubt that Respondent's actions which are the basis for the complaint in this

[24]Cf. *Houston Mailers Union No. 36, etc.* (*Houston Chronicle*), 199 NLRB No. 36, relied upon by Respondent, in which the Board held that where the employer and the union there involved had specifically agreed in their bargaining agreement that the union "shall not discipline the foreman," and where the only issue before the Board concerned discipline of a foreman by the union, the Board deferred to the arbitration process in accordance with the bargaining agreement of the parties.

matter are subject to arbitration in any event. Almost all of Respondent's conduct with which we are here concerned, including the charges against the hyphenates, the disciplinary trials and the penalties imposed, occurred after the termination of the bargaining agreements and at a time when neither Respondent nor the employers had consented to arbitration of their actions.

3. The legal issues involved in this proceeding are matters of importance to the administration of the Act, as shown by the Supreme Court's recent decision in *Florida Power*. The application of the principles laid down in that decision and the development of the law in this area should be made by the Board in an unified and consistent fashion, and not delegated to the diverse opinions of various arbitrators who have neither been selected to administer the Act nor sworn to do so. This matter is highly complex and involves many factual and legal issues having little or no relation to contractual questions. The parties have spent much time litigating these issues and at considerable expense. It would seem to me an act of administrative abnegation of duty to tell the parties to start over again before another tribunal when the proceeding has already been tried before the agency appointed by Congress to hear and decide the issues.

Conclusions of Law

1. The employer members of the Association of Motion Picture and Television Producers, Inc., American Broadcasting Companies, Inc., Columbia Broadcasting Systems, Inc., National Broadcasting Company, Inc., and QM Productions (herein collectively referred to as "the employers") are, and each of them is,

an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.

2. Writers Guild of America, West, Inc. ("the Respondent") is a labor organization within the meaning of Section 2(5) of the Act.

3. By restraining and coercing the employers of hyphenate-members of the Respondent, and each of the employers, in the selection of their representatives for the purpose of collective bargaining or the adjustment of grievances, as found hereinabove, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(B) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Sections 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent engaged in unfair labor practices in violation of Section 8(b)(1)(B) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The record is convincing that Respondent, well aware of the primary supervisory, management, and executive functions of its hyphenate-members, drafted its strike rules and enforced them with the intent of compelling those hyphenate-members from going to work during the strike, without regard to the capacity in which they performed or the work done. In particular, by threatening to blacklist in perpetuity such hyphenates who worked during the strike, the rules threatened to drive those hyphenates out of the industry. Though

the mandatory effect of the rule was rescinded (see Resp. Exh. 11), there are other indications that Respondent's actions encourage a voluntary blacklist. Thus, in its letter to members explaining their options on appeals from penalties imposed upon certain hyphenates who worked, Respondent stated, *inter alia*, "There is obviously a stigma attached to expulsion which might cause individual members of the [Respondent] to refrain from working for such a person. The Guild itself cannot order its members to refrain from working with an individual merely because he was expelled." (Resp. Exh. 12) In at least one instance, in the disciplinary transcript relating to Robert Blees, a writer-member of Respondent expressed his intent not to work with Blees because the latter had worked during the strike, though the writer-member acknowledged that he was under no compulsion from Respondent to take that position. I fully realize that this member as well as others might have adopted this position even if Respondent had not suggested it by its rule and other communications and publicity. However, the fact is that Respondent did suggest it, and it is now impossible to disentangle the consequences flowing from its actions. I shall recommend a broad order in order to restore the *status quo* and remedy the various effects of Respondent's actions found to have violated the Act.

The General Counsel and the Charging Parties have requested a number of particular remedies, some of which I find appropriate in the circumstances and have included in the following order. It is requested that the fines, suspensions, and expulsions from membership of the hyphenates be rescinded and revoked. In the ordinary case I would be loath to hold that a union may not suspend or expel a member who

worked during a legal strike. However, here, where the hyphenates have been forced to undergo the stigma of suspension or expulsion by Respondent's deliberate action in refusing them a free choice to withdraw in a normal manner prior to working during the strike, and where Respondent has further suggested that members not work with hyphenates who were expelled, I am convinced that the effects of Respondent's actions can best be remedied by restoration of the *status quo ante*. It is also noted that in the four cases in which appeals were perfected, Respondent's membership rejected the penalties of suspension or expulsion. Inasmuch as the record is incomplete as to the status of the other hyphenates charged, I shall recommend the normal remedial order as to all, without distinction between those whose suspension or expulsion has already been revoked and those for whom it has not.

It is also requested that Respondent be ordered to mail a copy of the notice to each of its members and to publish the notice in the local trade papers, "Hollywood Reporter" and "Daily Variety", as well as in local papers of general circulation. The record shows that Respondent was careful to mail its strike rules, directions, orders and instructions to all its members in order to give those actions wide and personal service; and further that the matter of compulsion of the hyphenate-members to abide by Respondent's rules and the trials of those members and the penalties imposed upon them was given wide publicity in the trade papers and the local press through press releases and other information supplied by Respondent and its officers. The request that equal publicity be given to the Board's notice is clearly justified. However, I believe that this can be accomplished through re-

quiring Respondent to publish the Board's notice in the two trade papers for one week (six consecutive issues). I do not think that it is necessary that the notice be published by Respondent in the local press, or that the publication in the trade papers be for three consecutive weeks as requested. I further do not agree, as has been requested, that there is any necessity that the notice be read at Respondent's membership meetings, in addition to the normal posting of the notice, and the mailing and publication just considered.

There is a further request that Respondent be ordered to reimburse those hyphenates who were brought to trial for violating Respondent's strike rules for the reasonable expenses of defending their conduct in their trials. A persuasive argument can be made on the point. There is no question but that Respondent deliberately used the difficult position of the hyphenates in a power play against the employers. However, the hyphenates are not entirely without responsibility in the result; for whatever their reasons, they had maintained membership in Respondent until the very last minute. There is also no evidence that Respondent did not sincerely believe that it had the right to do as it did. While sincerity does not excuse violation of the law, it has weight in considering an unusual remedy such as that requested. I do not believe that this remedy is justified in these circumstances.

Upon the foregoing findings of fact, conclusions of law and the entire record, I issue the following recommended:[25]

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[25]In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor

(This footnote is continued on next page)

ORDER

Writers Guild of America, West, Inc., the Respondent herein, its officers, agents and representatives, shall:

1. Cease and desist from:

(a) Restraining or coercing any employer in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances:

(1) by issuing rules, orders, directions or instructions in any form to any supervisor, executive or other management personnel whose functions involve or may involve collective bargaining or the adjustment of grievances not to perform supervisory, managerial or executive functions for such employer, or

(2) by threatening any such employer representative with fines, suspension or expulsion from membership, blacklisting, obstracism, or any other penalty or reprisal for performing supervisory, managerial or executive functions for such employer, or

(3) by citing or charging any such employer representative with violation of any such rule, order, direction or instruction, or by summoning any such employer representative before any committee, board, panel, or tribunal to be tried for, or by trying any such employer representative for violation of any such rule, order, direction or instruction forbidding such representative from performing supervisory, executive, or managerial functions, or

(4) by fining or otherwise disciplining such employer representatives for performing supervisory, executive, or managerial functions, or

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Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(5) by enforcing in any other manner any such rule, order, direction, or instruction.

(b) In any like or related manner restraining or coercing any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Revoke, rescind, and expunge from Respondent's records, the fines, suspensions, or expulsions from membership, or other disciplinary action, or penalty imposed upon Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, Barry Crane, or upon any other employer representative as described in paragraph 1.(a)(1) above, for working during the strike beginning on or about March 4, 1973, as a supervisor, executive, or in a managerial capacity.

(b) Reimburse Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader, and Barry Crane, and any other employer representative as described in paragraph 2(a) above, for the fines levied against them, with interest thereon at 6 percent per annum.

(c) Advise Hugh Benson, Robert Blees, Cy Chermack, Jon Epstein, David Levinson, John T. Mantley, Herman S. Saunders, David Victor, Robert A. Cinader,

and Barry Crane, and any other employer representative as described above, in writing, that any fines levied against them, and any action suspending or expelling them from membership in the Respondent, or any other penalty imposed upon them for working during the said strike, has been revoked and rescinded, and that such fines and suspensions or expulsions, or other penalties have been expunged from Respondent's records.

(d) Post at its office and meeting halls copies of the notice attached, marked "Appendix."[28] Copies of said notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Mail a signed copy of the attached notice marked "Appendix" to all Respondent's members to whom Respondent's strike rules dated February 20, 1973, were mailed.

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[28]In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENPORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(f) Publish the attached notice marked "Appendix" for one week (6 consecutive issues) in "Hollywood Reporter" and "Daily Variety," immediately after posting said notice.

(g) Notify the Regional Director for Region 31, in writing, within 20 days from the date of the receipt of this Decision, what steps have been taken to comply herewith.

Dated at Washington, D.C.

/s/ Sidney J. Barban
Sidney J. Barban
Administrative Law Judge

Form NLRB—4726.

NOTICE TO
MEMBERS

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE
UNITED STATES GOVERNMENT

WE WILL NOT restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances

(a) by ordering, directing, or instructing any such representative not to perform supervisory, executive or managerial functions for an employer, or

(b) by threatening any such representative with fines, suspension or expulsion from membership, blacklisting, or any other penalty for performing supervisory, executive or managerial functions, or

(c) by charging, trying, or penalizing any such representative for working as a supervisor, executive, or in a managerial position.

WE WILL NOT in any like or related manner restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

WE WILL rescind and revoke, and expunge from our records any fine, suspension or expulsion from membership or any other penalties to the extent previously imposed on the following persons or on any other representative of an employer for the purpose of collective bargaining or the adjustment of grievances who worked as a supervisor, executive, or in a man-

agerial position during the strike which began on or about March 4, 1973:

Hugh Benson
Robert Blees
Cy Chermack
Robert A. Cinader
Barry Crane
Jon Epstein
David Levinson
John T. Mantley
Herman S. Saunders
David Victor

WE WILL reimburse the persons named and described above for any fines imposed upon them for working during the strike which began on or about March 4, 1973, with interest thereon at 6 percent per annum.

WRITERS GUILD OF AMERICA,
WEST, INC.
(Labor Organization)

Dated .....By .....
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST
NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, Calif. 90024, Telephone (213) 824-7351.

APPENDIX B.

Decision and Order.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Writers Guild of America, West, Inc.	)	Cases 31-CB-1203-2, and 31-CB-1316,
and	)	
Association of Motion Picture and Television Producers, Inc.[1]	)	
and	)	Cases 31-CB-1223, and 31-CB-1313, and
American Broadcasting Companies, Inc.	)	
Columbia Broadcasting System, National Broadcasting Company, Inc.[2]	)	
and	)	Case 31-CB-1355
QM Productions	)	

On September 18, 1974, Administrative Law Judge Sidney J. Barban issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions[3] and a supporting brief, and Charging Parties Networks and the Association filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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[1]Hereinafter referred to as the Association.

[2]Hereinafter referred to as the Networks.

[3]In its brief to the Board, Respondent withdrew its contention that certain issues should be deferred to arbitration under *Collyer Insulated Wire*, 192 NLRB 837 (1971). Accordingly, that issue is not before the Board for resolution.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge to the extent consistent herewith, and to adopt his recommended Order.

1. The Administrative Law Judge found violations of Section 8(b)(1)(B) only with respect to the "hyphenates"[4] in the producer, director, and story editor classifications because the record showed that, except for Jerome Bredouw, all of the persons who were both charged and tried by the Union occupied those positions. With respect to Jerome Bredouw, he found that the charges against Bredouw were dismissed after trial, and that no penalty was assessed against him. The Administrative Law Judge therefore concluded that it was unnecessary to consider alleged violations as to those hyphenates in other classifications,[5] and he therefore did not resolve these additional allegations

[4]"Hyphenates" is a term applied to persons who are writers but possess the ability to perform in more than one capacity, such as producing, directing, or editing for their employers in the industry. We affirm the Administrative Law Judge's findings that hyphenates who are also producers, directors, and story editors are supervisors within the meaning of Sec. 2(11) of the Act.

[5]Included in these classifications are vice presidents for program production, vice presidents for production, vice presidents for program development, general programming executives, managers of film programs, and executives. Although the Administrative Law Judge made no finding on the supervisory status of persons occupying these positions, we find it necessary to do so. The record clearly reflects that persons in these classifications engage in hiring and are representatives, or potential representatives, of their employers in the adjustment of grievances. Accordingly, we conclude that persons occupying the above positions are supervisors and representatives of their employers within the meaning of Secs. 2(11) and 8(b)(1)(B) of the Act.

in the complaint. The Association and the Networks, two of the Charging Parties herein, except to this omission for reasons we deem meritorious.

There is no question that, although only some of the hyphenates were brought to trial and actually fined or disciplined for crossing the picket line, all of the hyphenates named in the complaint were threatened with similar discipline and adverse action if they crossed the picket line to go to work. There is also no question that when Respondent threatened the hyphenates, Respondent was determined to enforce its threats without regard to the fact that the Charging Parties uniformly followed a policy during the strike not to require hyphenates to perform any unit or struck work. Furthermore, if it had any doubt at all, Respondent could easily have ascertained whether any struck work was in fact performed by comparing dated scripts to the final film production. As we find that Section 8(b)(1)(B) proscribes the disciplinary action here taken against some hyphenates[6] (but only threatened against others), it would seem to follow, and we further find, that the proscription also encompasses the threat to take the prohibited disciplinary action,[7] therefore sustain the complaint's alleged violations of Section 8(b)(1)(B) of the Act, *in toto*.

[6]*Chicago Typographical Union No. 16 (Harmmond Publishers, Inc.)*, 216 NLRB No. 149 (1975); *New York Typographical Union No. 6, International Typographical Union, AFL-CIO (Daily Racing Form, a Subsidiary of Triangle Publishers, Inc.*, 216 NLRB No. 147 (1975).

[7]*Local 423, Laborers' International Union of North America, AFL-CIO (Mansfield Flooring Co., Inc.)*, 195 NLRB 241 (1972); *International Union of Operating Engineers, Local 406, AFL-CIO (New Orleans Chapter, Associated General Contractors of America, Inc.)*, 189 NLRB 255, 265 (1971); *United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Association, Local No. 220 (Jones and Jones, Inc.)*, 177 NLRB 632, 653 (1969).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Writers Guild of America, West, Inc., Los Angeles, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

Dated, Washington, D.C. May 13, 1975.

Howard Jenkins, Jr.,
Member
John A. Penello,
Member
NATIONAL LABOR
RELATIONS BOARD

(Seal)

MEMBER FANNING, dissenting:

For the reasons stated in my dissenting opinion in *Triangle Publications, Inc.*, 216 NLRB No. 147, I would dismiss the complaint. I wish to point out, once again, that the Supreme Court has, in *Florida Power & Light Co.*,[8] indicated that Section 8(b)(1)(B) was designed for the sole and limited purposes of preventing labor organizations from forcing employers into multiemployer bargaining negotiations and from dictating to employers whom they should select to represent them during grievance adjustment procedures and/or collective-bargaining sessions. Our prior "evolutionary" approach[9] to this section of the Act having thus been rejected by the Supreme Court, it is obvious that the very narrow thrust accorded the section in its early years must be reconstituted as its current thrust. Whatever the wisdom of Respondent's course of action herein, the plain fact is that its actions are not, in my view, proscribed by the section upon which the General Counsel relies. I thus dissent.

Dated, Washington, D.C. May 13, 1975.

John H. Fanning,
Member
NATIONAL LABOR
RELATIONS BOARD

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[8] *Florida Power & Light Co. v. International Brotherhood of Electrical Workers, Local 641*, 417 U.S. 790 (1974).

[9] For a discussion of the history of Section 8(b)(1)(B) see *id.* at 798-805.

D—9835

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances:

(a) by issuing rules, orders, directions, or instructions in any form to any such employer representative not to perform supervisory, executive, or managerial functions for an employer, or

(b) by threatening any such employer representative with fines, suspension, or expulsion from membership, blacklisting, ostracism, or any other penalty or reprisal for performing supervisory, executive, or managerial functions, or

(c) by charging or trying any such employer representative for performing supervisory, executive, or managerial functions, or

(d) by fining or otherwise disciplining any such representative for performing supervisory, executive, or managerial functions, or

(e) by enforcing in any other manner any such rule, order, direction, or instruction.

WE WILL NOT in any like or related manner restrain or coerce any employer in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances.

WE WILL rescind and revoke, and expunge from our records, any fine, suspension, or expulsion from membership or any other penalties to the extent previously imposed on the following persons, or on any other representative of an employer for the purpose of collective bargaining or the adjustment of grievances, who worked as a supervisor, executive, or in a managerial position during the strike which began on or about March 4, 1973, and advise such persons of this action:

Hugh Benson
Robert Blees
Cy Chermack
Robert A. Cinader
Barry Crane
Jon Epstein
David Levinson
John T. Mantley
Herman S. Saunders
David Victor

WE WILL reimburse the persons named and described above for any fines imposed upon them for working during the strike which began on or about March 4, 1973, with interest thereon at 6 percent per annum.

WRITERS GUILD OF AMERICA,
WEST, INC.
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 12100 Federal Building, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213—824—7351.

APPENDIX C.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Nos. 604, 1161—September Term, 1975.
(Argued May 10, 1976 Decided November 22, 1976.)

American Broadcasting Companies, Inc., CBS, Inc., and National Broadcasting Company, Inc., *Petitioners,* and Association of Motion Picture and Television Producers, Inc., *Intervenor,* v. National Labor Relations Board, *Respondent.*	)	No. 75-4089
National Labor Relations Board, *Petitioner,* and American Broadcasting Companies, Inc., CBS, Inc. and National Broadcasting Company, Inc., *Intervenors,* v. Writers Guild of America, West, Inc., *Respondent.*	)	No. 75-4121

Before: Moore and Timbers, *Circuit Judges,* and Newman, *District Judge.**

*Hon. Jon O. Newman, United States District Judge, District of Connecticut, sitting by designation.

Petition to review, and application to enforce, order of National Labor Relations Board, 217 N.L.R.B. No. 159 (1975), requiring a labor union to cease and desist from certain conduct during a four month strike in the spring of 1973 which the Board found to be in violation of Section 8(b)(1)(B) of the National Labor Relations Act and to take certain affirmative action to remedy the violations.

Enforcement denied.

John G. Elligers, Atty., NLRB, Washington, D.C. (John S. Irving, Gen. Counsel, John E. Higgins, Jr., Deputy Gen. Counsel, Elliott Moore, Deputy Assoc. Gen. Counsel, NLRB, Washington, D.C., on the brief), *for Petitioner-Respondent National Labor Relations Board.*

Richard N. Fisher, Los Angeles, Cal. (Steven C. Babb, and O'Melveny & Myers, Los Angeles, Cal., on the brief), *for Petitioners-Intervenors American Broadcasting Companies, Inc., CBS, Inc.*, and *National Broadcasting Co., Inc.*

Harry J. Keaton, Los Angeles, Cal. (Andrew B. Kaplan, and Mitchell, Silberberg & Knupp, Los Angeles, Cal., on the brief), *for Intervenor Association of Motion Picture and Television Producers, Inc.*

Julius Reich, Los Angeles, Cal. (Reich, Adell & Crost, and Selvin & Weiner, Los Angeles, Cal., on the brief), *for Respondent Writers Guild of America, West*, Inc.

Per Curiam:

On this petition to review by the networks (American Broadcasting Companies, Inc., CBS, Inc., and National Broadcasting Company, Inc.), and an application by the National Labor Relations Board to enforce, an order of the Board, 217 N.L.R.B. No. 159 (1975), requiring the union (Writers Guild of America, West, Inc.) to cease and desist from certain conduct during a strike found to be in violation of Section 8(b)(1)(B) of the National Labor Relations Act and to take certain affirmative action to remedy the violations, we find the essential issue to be whether as a matter of law the Board correctly applied Section 8(b)(1)(B) in concluding that the union restrained and coerced the employers by threatening to blacklist and discipline and by fining and expelling from membership certain supervisory personnel who crossed the picket lines during a strike.

For substantially the reasons set forth in the dissenting opinion of Board Member John H. Fanning, 217 N.L.R.B. No. 159, we hold that the Board as a matter of law incorrectly applied Section 8(b)(1)(B) to the instant case and we deny enforcement of the Board's order. See *Florida Power & Light Co. v. International Brotherhood of Electrical Workers, Local 641*, 417 U.S. 790 (1974).

Enforcement denied.

Moore, *Circuit Judge* (Dissenting):

I cannot join in the conclusion of the majority that enforcement should be denied because in my opinion the facts and the law clearly call for an opposite result, *i.e.*, the granting of enforcement.

Briefly, three broadcasting companies, American Broadcasting Companies, Inc., CBS, Inc. and National Broadcasting Company, Inc., certain of their employees (writers of material for live, nationally-broadcast television programs), Writers Guild of America, West Inc. (the "Guild") and the National Labor Relations Board (the "Board") and an Intervenor are involved. In March 1973 the Guild called a strike. Many of the Guild's members were employees vested with supervisory and managerial functions. Certain of these employees crossed the Guild's picket lines. Against this group the Guild brought disciplinary proceedings which resulted in the imposition of fines and other sanctions. The name given to this category of employee, namely, supervisors or management representatives, is "hyphenate". Various hearings were held between May 21, 1973 and January 25, 1974 before an Administrative Law Judge ("ALJ") which resulted in a lengthy opinion, dated September 18, 1974, wherein he found that the Guild, by its actions, restrained and coerced the employees of Guild members who were hyphenates in the selection of their representatives for the purpose of collective bargaining or the adjustment of grievances. The ALJ order contained certain "cease and desist" provisions relative to any employee whose function involved supervisory or managerial tasks and enjoined disciplinary proceedings against such group by way of fines or otherwise.

When the matter came before the Board on the record, briefs and exceptions to the ALJ decision, a panel of the Board affirmed "the rulings, findings and conclusions of the Administrative Law Judge to the extent consistent herewith [its opinion]" and adopted the recommended ALJ order. A third member of this panel dissented. The Board sustained "the complaint's alleged violations of Section 8(b)(1)(B) of the Act [the National Labor Relations Act], *in toto*."

There is no disputed question of fact as to the threats and disciplinary action by way of fines against the hyphenates. This *in terrorem* action by the Guild would inevitably have an effect of inclining these employees towards their Unions in matters supervisory and managerial when they should have been free of any coercive influences.

The majority's reliance on *Florida Power & Light Co. v. International Brotherhood of Electrical Workers, Local 641*, 417 U.S. 790 (1974) is misplaced. In *Florida Power*, the Court of Appeals (487 F.2d 1143, 1157 [D.C. Cir., 1973]) stated:

> "When a supervisor acts as such he is a representative of management, and as such he should be immune from union discipline. The unions participating in the present cases conceded as much at oral argument when they agreed that when a supervisor crosses a picket line to perform *supervisory* work, he remains immune from discipline." (Emphasis in original)

In the Supreme Court, the Court made it clear that there is a definite cleavage between supervisory work and "rank-and-file" work, and stated:

"The question to be decided is whether the unions committed unfair labor practices under §8(b)(1)(B) when they disciplined their supervisor-members for crossing the picket lines and *performing rank-and-file struck work* during lawful economic strikes against the companies." (Emphasis added) 417 U.S. at 792.

The basis of the Supreme Court's decision was made even clearer when it stated:

"The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of §8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." 417 U.S. at 804-5.

The Court of Appeals should not usurp the function of the ALJ and Board unless there is a complete absence of evidence to support its findings. Both concluded that the hyphenates were *bona fide* supervisors and had managerial functions. Since there is more than adequate proof to support these findings, I would enforce the Board's order.

APPENDIX D.

New York Typographical Union No. 6, International Typographical Union, AFL-CIO and Daily Racing Form, a Subsidiary of Triangle Publications, Inc. Case 22-CB-2345.

March 6, 1975

SUPPLEMENTAL DECISION

By Members Fanning, Jenkins, and Penello

On October 5, 1973, the Board issued a decision[1] in the above-entitled proceeding in which it affirmed the rulings, findings, and conclusions of the Administrative Law Judge, as contained in his Decision of June 27, 1973, and ordered that the Respondent take the action set forth in the recommended Order of the Administrative Law Judge.

Thereafter, on July 30, 1974, the Board advised the parties of its decision, *sua sponte*, to reconsider the decision in the above-entitled proceeding in light of the Supreme Court's decision in *Florida Power and Light Co.*[2] Subsequently, the Board invited statements of position from the parties. Only the General Counsel responded and submitted such a statement.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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[1] 206 NLRB 294 (1973).

[2] *Florida Power and Light Co. v. International Brotherhood of Electrical Workers*, 417 U.S. 790 (1974).

The Board has duly considered the matter and has decided, for the reasons set forth below, to reaffirm its prior conclusion that the Respondent violated Section 8(b)(1)(B) of the Act by fining and expelling from membership its member, Flood, who was also a company supervisor, for working behind the Respondent's picket line.

In our previous decision, we found that Flood, as well as all employees at the plant, continued to work throughout the Respondent's strike of the Company's plant. The record established, and it was undisputed, that "at all times" during the strike Flood continued to perform his normal supervisory duties. Flood's duties as production manager included overall responsibility for, and supervision of, the Company's pressroom and composing room, adjustment of employee grievances and complaints and participation on a three-man negotiating team which was responsible for negotiating collective-bargaining agreements with Typographers Local 71 and Lithographers and Platemakers Local No. 1, which represented the Company's composing[3] and pressroom employees, respectively. Flood was disciplined by the Respondent for having violated its rules "by working behind the Union's picket line."

In *Florida Power and Light, supra,* the Supreme Court held that whether or not a union violates Section 8(b)(1)(B) by disciplining a supervisor-member depends on whether that discipline may adversely affect

[3]Respondent, a sister local to Local 71, did not represent these employees, although it claimed jurisdiction over the Company's composing room and that the Company was performing struck work. Flood was one of the few, if not the only, individual employed at the struck plant who was a member of Respondent at the time of the strike.

the supervisor's performance of his 8(b)(1)(B) duties. Thus, the Court said:

> The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of 8(b)(1)(B) *only when that discipline may adversely affect* that supervisor's conduct in performing the duties of, and acting in the capacity as, grievance adjuster or collective bargainer on behalf of the employer. [Emphasis supplied.]

In *Hammond Publishers, Inc.*,[4] a Board majority interpreted the Supreme Court's holding in *Florda Power and Light* to mean, *inter alia,* that in situations where the disciplined supervisor has engaged *"only* in the performance of supervisory activities (not limited to grievance adjustment or collective bargaining)," a union's disciplining of that supervisor violates Section 8(b)(1)(B) of the Act because "it is reasonably likely that an adverse effect will carry over to the supervisor's performance of his 8(b)(1)(B) duties. . . ." In so holding in *Hammond,* the Board focused on the type and amount of activities performed by the supervisor-member during the strike rather than, as urged by the dissent herein, on the union's professed reason for imposing the discipline.

We agree with the reasoning in *Hammond* and feel that it controls in the instant case since the disciplined supervisor-member herein performed only his normal supervisory duties during the strike. Our dissenting colleague feels, however, that the discipline in the instant case was not violative of Section 8(b)(1)(B).

[4]*Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, 216 NLRB No. 149 (1975).

In so concluding, the dissent intimates that Section 8(b)(1)(B) is violated only where the discipline is directed toward the manner in which a supervisor performs his 8(b)(1)(B) duties, since it is asserted, only under such circumstances may the discipline adversely affect the supervisor's future performance of his 8(b)(1)(B) duties. Under the dissent's analysis, therefore, a union may legally discipline a supervisor-member for "crossing a picket line" or for "working during a strike," etc., even though the supervisor has performed *only* supervisory functions. Thus, under the dissent, a union may in effect tell a supervisor-member that he may not perform *any* functions, even grievance adjusting or collective bargaining, during a strike without running the risk of being disciplined. The reasoning of the dissent seems to be rooted in the conviction that a supervisor-member is acting as a "strikebreaker" and thus should be subject to union discipline if he performs *any* function during a strike. The justification for this analysis draws support from the dissent's assertion that the employer must pay this "price" for permitting supervisors to remain union members or for having neglected to incorporate a provision in the collective-bargaining agreement permitting supervisor-members to perform supervisory duties during a strike.

We do not believe that the Supreme Court's decision in *Florida Power* warrants the severe limitations which the dissent would impose on the scope of Section 8(b)(1)(B). The Supreme Court was not faced in *Florida Power* with the situation presented herein. In *Florida Power*, the Supreme Court dealt with union discipline of supervisor-members who crossed picket lines to perform rank-and-file struck work, not those who crossed picket lines to perform supervisory duties.

In fact the majority noted[5] that the supervisors who had performed only their regular duties during the strike had not been disciplined. As Mr. Justice White stated in the dissent:[6] "I do not read the Court to say that § 8(b)(1)(B) would allow a union to discipline supervisor-members for performing supervisory or management functions, as opposed to customary rank-and-file work, during a labor dispute."

Therefore, nothing in the Supreme Court's *Florida Power* decision dictates the conclusion, urged by the dissent, that a union has a right to discipline a supervisor-member who performs *any* function during a strike.[7] The most that can be said is that the Court sanctioned the disciplining of supervisor-members who performed rank-and-file struck work during a strike. In this same vein, it is apparent to us that it was the performance of rank-and-file struck work by supervisor-members which the Supreme Court referred to as strikebreaking for which union sanctions could be incurred.[8] Therefore, under our view of *Florida Power* and its definition of strikebreaking, the only so-called "price" that an employer must pay for

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[5]417 U.S. 790, 812 (1974), fn. 22.

[6]*Id.* at 815, fn. 2.

[7]As stated in the circuit court opinion in *Illinois Bell*, 487 F.2d 1143, 1157 (C.A.D.C., 1973), affirmed in *Florida Power*, *supra*: "When a supervisor acts as such he is a representative of management, and as such he should be immune from discipline. The unions participating in the present cases conceded as much at oral argument when they agreed that when a supervisor crosses a picket line to perform *supervisory* work he remains immune from discipline."

[8]417 U.S. 790, 812, fn. 22.

permitting a supervisor to be a union member, is that the supervisor-member cannot, with immunity, cross union picket lines to perform rank-and-file work.[9]

We believe that the adverse future effect which the Supreme Court referred to as violative in *Florida Power* is as likely to occur, regardless of a union's professed reasons or intent, if a supervisor-member is disciplined after having performed only his normal supervisory duties or if he is disciplined after having engaged in contract interpretation.[10] In the latter case it is the supervisor's future manner of contract interpretation which is likely to be influenced and in the former case it is the supervisor's actual future performance of supervisory duties, including grievance adjustment or collective bargaining, which is likely to be influenced. In either case the employer has been restrained in the selection of his 8(b)(1)(B) representative.

Accordingly, because Flood was performing only his normal supervisory duties which included handling

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[9]As stated by the circuit court in *Illinois Bell, supra,* 1169-70:

> If the employer, however, chooses not to exercise his rights under that section [14(1)], permits his supervisors to join unions . . . the employer cannot still insist on the supervisors' undivided loyalty in every union-employer dispute, no matter how unrelated the subject of that dispute is to the supervisory function. . . .
>
> * * *
>
> This is not to say, of course, that by permitting his supervisors to join unions the employer *completely* waives his right to their loyalty. Even if he permits them to join unions, Section 8(b)(1)(B), as interpreted by *Oakland Mailers* and *Meat Cutters,* immunizes them from union discipline imposed for the manner in which they perform their *supervisory* functions. [Emphasis supplied.]

[10]The Supreme Court assumed that this latter situation, which arose in *San Francisco-Oakland Mailers' Union No. 18, International Typographical Union (Northwest Publications, Inc.)*, 172 NLRB 2173 (1968), fell within the purview of its *Florida Power* ruling.

grievances and participating in the collective-bargaining process, we find, for the reasons stated above, that the Respondent violated Section 8(b)(1)(B) of the Act by fining and expelling Flood from membership for working behind its picket line. We, therefore, reaffirm our previous Decision and Order.

MEMBER FANNING, dissenting:

Section 8(b)(1)(B) of the Act makes it an unfair labor practice for a labor organization "to restrain or coerce . . . an employer in the *selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.*" (Emphasis supplied.)

The Supreme Court's analysis of Section 8(b)(1)(B) in *Florida Power & Light Co. v. International Brotherhood of Electrical Workers*[11] now leads me to conclude that the statutory language of Section 8(b)(1)(B) means only what it says and no more. Because there is absolutely no evidence tending to establish that the Company herein was restrained or coerced in its selection of representatives for the purposes of collective bargaining or the adjustment of grievances, I dissent.

The basic defect in the majority's analysis is that it attempts to interpret *Florida Power & Light* at the expense of the history of Section 8(b)(1)(B). I do not believe a meaningful analysis of *Florida Power* is possible under such circumstances and therefore provide that history.

Section 8(b)(1)(B) was enacted, via the Taft-Hartley amendments, in 1947. Its legislative history irrefutably indicates, as the Supreme Court in *Florida*

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[11]417 U.S. 790 (1974).

Power recognized, that Congress intended, *solely* and *exclusively*, to prevent labor organizations from forcing employers to join or withdraw from multiemployer bargaining groups and to end the practice of some labor organizations at that time of dictating whom employers should select as bargaining or grievance adjustment representatives. As the Supreme Court pointed out, Senator Taft's remarks were illustrative:

> This unfair labor practice referred to is not perhaps of tremendous importance, but employees cannot say to their employer, "We do not like Mr. X, we will not meet Mr. X. You have to send us Mr. Y." That has been done. It would prevent their saying to the employer, "You have to fire Foreman Jones. We do not like Foreman Jones, and therefore you have to fire him, or we will not go to work." This is the only section in the bill which has any relation to Nation-wide bargaining. Under this provision it would be impossible for a union to say to a company, "We will not bargain with you unless you appoint your national employers' association as your agent so that we can bargain nationally." Under the bill the employer has a right to say, "No, I will not join in national bargaining. Here is my representative, and this is the man you have to deal with." I believe the provision is a necessary one, and one which will accomplish substantially wise purposes.[12]

For some 20 years after its enactment, the Board's view of the parameters of Section 8(b)(1)(B) substantially coincided with both the legislative history and

[12]93 Cong. Rec. 3950, 3953-54 (1947).

the statutory language.[13] It is true, as the Supreme Court has pointed out, that the Board's decision in *Oakland Mailers*,[14] decided in 1968, represented a quantum leap from the Board's initial view of the breadth of Section 8(b)(1)(B). That leap, however, was never intended, in my view, to propel the Board into the area of regulating the economic weaponry available to a labor organization during a strike. Rather it represented what is to my mind the reasonable recognition that labor organizations should not be permitted to accomplish indirectly that which they were proscribed from accomplishing directly. In the concrete terms of the decision in *Oakland Mailers*, it represented no more than the view that the respondent therein, by disciplining various supervisor-members for the manner in which they interpreted the contract, and by threatening to discipline supervisor-members because of disagreements involving contract interpretation and grievance adjustment, had violated Section 8(b)(1)(B) even though no direct pressure designed to seek the supervisors' removal had been placed on the employer. Significantly, especially in terms of the instant case, we stated in distinguishing *N.L.R.B. v. Allis-Chalmers Manufacturing Co.*:[15]

> [That] case involved a union's fining of its members for crossing picket lines. *The primary relationship there affected was the one between the union*

[13]See, e.g., 417 U.S. at 799, fn. 10, and accompanying text. In fact, up until 1960 only 11 cases had arisen under Sec. 8(b)(1)(B). See brief of the Board at p. 16, *N.L.R.B. v. Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 284 F.2d 893 (C.A. 2, 1960).

[14]*San Francisco-Oakland Mailers Union No. 18, International Typographical Union (Northwest Publications, Inc.)*, 172 NLRB 2173 (1968).

[15]388 U.S. 175 (1967).

and its members, and the union's particular objective—solidarity in strike action—was deemed by the Supreme Court a legitimate area for union concern in the circumstances involved. In contrast, in the present case, the relationship primarily affected is the one between the Union and the Employer, since the underlying question was the interpretation of the collective-bargaining agreement between the parties.[16]

Oakland Mailers gave rise to a line of cases which further expanded the reach of Section 8(b)(1)(B).[17] Union discipline of supervisor-members became proscribed not merely when the nature of the dispute between union and supervisor involved the latter's performance of particular collective-bargaining or grievance adjustment functions but in all settings in which the supervisor was engaged in *any* supervisory or management function.

As the Supreme Court notes in *Florida Power* these cases in large part foreshadowed the cases to come before the Court in *Florida Power*. They introduced, primarily as justification for the expansion they evinced, the concept of "loyalty" and the role it played in the resolution of 8(b)(1)(B) issues. Supervisor-members could not, it was said, be disciplined for the manner in which they performed supervisory functions because such discipline "reasonably tends to derogate from the supervisor-member's complete loyalty to

[16]172 NLRB at 2174 (emphasis supplied). Why the perception that the union's fining of a member for crossing picket lines primarily affected the union-member relationship and not the union-employer relationship is cast aside by the majority in this case will, apparently, remain a mystery.

[17]See, e.g., 417 U.S. at 801, fn. 11, and cases cited in accompanying text.

management when called on to serve as a management representative."[18]

I participated in several of the cases in the line from *Oakland Mailers* to the cases discussed in *Florida Power*.[19] It is not necessary, at this juncture, to explore fully the effect *Florida Power's* treatment of them has had. They are, in any event, distinguishable from the instant case. In each and every such case from *Toledo Blade* to *Detroit Newspapers*,[20] the key to the legality of the union's discipline was the nature of the activity for which the supervisor was disciplined or threatened with discipline, and in each and every case the union's interest was not related in any way whatsoever to its substantial right to demand solidarity during a strike. In all such cases the supervisor-members were disciplined for the particular manner in which they performed a management function, not because they had failed to honor a picket line, and, while the justification for the Board's finding of violation in those cases can no longer be buttressed by so-called "loyalty" considerations, it is at least arguable that when a union's discipline is clearly *directed* at the manner in which a supervisor performs a function colorably related to grievance adjustment (e.g., suspension of an employee) or collective bargaining (e.g., contract interpretation), such discipline may have an adverse effect on the supervisor's future performance of those

[18]*Detroit Newspaper Printing Pressmen's Union 13, International Printing Pressmen and Assistants' Union of North America, AFL-CIO (The Detroit Free Press)*, 192 NLRB 106, 110 (1971).

[19]See, e.g., *id., Toledo Locals Nos. 15-P and 272 of the Lithographers and Photoengravers International Union, AFL-CIO (The Toledo Blade Company, Inc.)*, 175 NLRB 1072 (1969).

[20]*Id.*

functions. In all of those cases it could reasonably be inferred that the union's discipline was imposed *because of* the manner in which a supervisor had performed a collective-bargaining or grievance adjustment function, and was therefore properly proscribed. However, in a strike situation, what the supervisor does behind the picket line is, in the ordinary case, and most assuredly in this one, completely irrelevant. The union's interest is quite simply to preserve strike solidarity. It is specious to think that the union cares an iota whether its member (who seeks to retain the substantial benefit his union membership creates) is adjusting a grievance, operating a press, or engaged in any other activity while his fellow members man a picket line. It cares only that he is working during a strike.[21] It is even more specious to argue, as has the majority in this case and others,[22] that whatever the union's interest, it is reasonable to conclude that the supervisor will be affected in the future performance of his grievance adjustment or collective-bargaining duties. Can it seriously be argued that a supervisor who is disciplined for working during a lawful strike will relate that discipline to the manner in which he performed the particular function he was engaged in at the time the discipline was levied? Is not the only

[21]There may be rare cases where, in point of fact, the union's real interest is not the preservation of strike support but the discipline is couched in such terms. Those cases will of course ultimately depend on the substantiality of the facts tending to establish that the union was indeed posturing and, in fact, directing the discipline toward the performance of an 8(b)(1)(B) function (e.g. selecting only those supervisors who have adjusted grievances adverse to the union for disciplinary procedures).

[22]See, e.g., *Hammond Publishers, Inc.*, 216 NLRB No. 149 (1975).

reasonable conclusion the supervisor can draw the conclusion that he has been disciplined simply for working at all? In the future, when the supervisor represents the employer at the bargaining table, is it reasonable for the supervisor to fear subsequent discipline if he faithfully represents management's viewpoint because of his prior discipline for working during a strike?

The reasonable answers to these questions highlight the defects in the Board's position when it wrote the latest chapter in the history of Section 8(b)(1)(B), the cases involved in *Florida Power*. The Board's decisions in *Florida Power*,[23] *Illinois Bell*,[24] and *Wisconsin Electric*[25] represented the most profound departure from the limited scope accorded Section 8(b)(1)(B) in its early years, for they extended Section 8(b)(1)(B) to proscribe not only union discipline arising out of disputes arguably related to a grievance adjustment or collective-bargaining function, but also union discipline of supervisor-members who acted as strikebreakers; i.e., union members who crossed a lawful picket line to in part replace their fellow union members honoring the line. The discipline was violative, it was found, because the supervisors were working at the behest or in the interest of the employer and any other result would mean the

> . . . Employer could no longer count on the complete and undivided loyalty of those it had

[23]193 NLRB 30 (1971).

[24]192 NLRB 85 (1971).

[25]192 NLRB 77 (1971). The petition for certiorari in *Wisconsin Electric*, the companion case of *Illinois Bell*, was granted by the Supreme Court on June 24, 1974, the date of the Court's decision in *Florida Power*. Simultaneously, the judgment of the Seventh Circuit Court enforcing the Board's order was vacated and remanded with instruction to consider the case in light of the Supreme Court's decision in *Florida Power*. See 418 U.S. at 902.

selected to act as its collective-bargaining agents or to act for it in adjusting grievances.[26]

That refrain is echoed in the Administrative Law Judge's Decision adopted by the majority here:

> [T]he pressure extended by Respondent's actions on the Company's supervisor would tend to inhibit him and impair his effectiveness as a loyal supervisor in maintaining the Company's interests.

My reading of *Florida Power*, on the other hand, compels the conclusion that the "loyalty" an employer may demand from any supervisor is, *during a strike*, no greater than the loyalty that may be demanded by his union, at least for 8(b)(1)(B) purposes. As the Court stated:

> It is strenuously asserted, however, that to permit a union to discipline supervisor-members for performing rank-and-file work during an economic strike will deprive the employer of the full loyalty of those supervisors. Indeed, it is precisely that concern that is reflected in these and other recent decisions of the Board holding that the statutory language "restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances" is not confined to situations in which the union's *object* is to force a change in the identity of the employer's representatives, but may properly be read to encompass any situation in which the union's actions are likely to deprive the employer of the undivided loyalty of his supervisory employees. . . .
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> * * *

[26]192 NLRB at 78.

> *The concern expressed in this argument is a very real one, but the problem is one that Congress addressed, not through § 8(b)(1)(B), but through a completely different legislative route.*[27]

Similarly, when *Florida Power* is read against the backdrop of the history of Section 8(b)(1)(B), one would think my colleagues would at least consider the following statement:

> Nowhere in the legislative history is there to be found any implication that Congress sought to extend protection to the employer from union restraint or coercion when engaged in any activity other than the *selection* of its representatives for the purposes of collective bargaining and grievance adjustment. [Emphasis in original.][28]

My reading of *Florida Power* compels the further conclusion that the operative test in establishing a violation of Section 8(b)(1)(B) is whether it is reasonable to conclude that the union's discipline may adversely affect the disciplined supervisors' future performance of two distinct functions, grievance adjustment and collective-bargaining representation. The majority says it will because (a) the Board said so in *Hammond Publishers* and (b) the Board says so now.

In *Hammond Publishers*, the purported underpinning of the majority's analysis herein, a Board majority concluded that because the Supreme Court had "assum[ed] without deciding that *Oakland-Mailers'* fell within the outer limits of its test, the Supreme Court has implicitly recognized that an adverse carry-

[27]417 U.S. at 805-807 (emphasis supplied).
[28]*Id.* at 804.

over effect may result where the disciplined supervisor had been engaged in the activity of contract interpretation." This "recognition," the *Hammond* majority reasoned, led to the conclusion that when the supervisor engaged only in supervisory duties there was "clearly a violation" in the discipline because "it is reasonably likely that an adverse effect will carry over to the supervisor's performance of his 8(b)(1)(B) duties where he is disciplined after having engaged only in the performance of supervisory duties." The *Hammond* "rationale" reappears here:

> We believe that the adverse future effect which the Supreme Court referred to as violative in *Florida Power* is as likely to occur, regardless of a union's professed reasons or intent, if a supervisor-member is disciplined after having performed only his normal supervisory duties or if he is disciplined after having engaged in contract interpretation [citing *Oakland Mailers*]. In the latter case it is the supervisor's future manner of contract interpretation which is likely to be influenced and in the former case it is the supervisor's actual future performance of supervisory duties, including grievance adjustment or collective bargaining, which is likely to be influenced.

Several flaws come immediately to mind. First, the majority has engaged in a semantic gambit. The supervisors in *Oakland Mailers* were not disciplined, as the majority suggests, "*after* having engaged in contract interpretation" but rather "*for* allegedly assigning bargaining unit work in violation of the collective bargaining agreement."[29] But note the majority must

[29] *Id.* at 800. See also the Board's decision: "Specifically, Foreman Cox and Assistant Foremen Thompson and Fraser

use the word "after" to draw its alleged parallel with the instant case because Supervisor Flood was clearly *not* disciplined "*for* having engaged in supervisory duties." Secondly, the supervisors in *Florida Power* were also disciplined "after having engaged in supervisory duties." But what made the discipline in *Florida Power* not violative was the fact that the supervisors therein *were not disciplined for that reason* but rather because they had also performed bargaining unit work; they knew that to be the reason and with that knowledge there could be no argument that their performance of the specific 8(b)(1)(B) functions could reasonably be expected to be influenced. Third, an effect on one's performance of *supervisory* duties does not constitute a violation of Section 8(b)(1)(B), as I read *Florida Power*, if the effect is not also on one's performance of the specific functions of grievance adjustment or collective-bargaining representation.[30]

And so, having posed the critical issue, namely, whether an adverse effect is "reasonably likely" to result from the imposition of the discipline, the majority again responds affirmatively but without supporting reasons.

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were cited to appear before Respondent's executive committee which had the power to discipline union members. The citations involved certain alleged violations by the individuals of the collective-bargaining agreement . . . . There was, in addition, evidence of a number of threats made by Respondent's agents to Foreman Cox and Assistant Foreman Thompson and Bowlin. These threats also arose over disagreements involving contract interpretations or grievance adjustment. . . ." 172 NLRB 2173 (1968).

[30] Unless my colleagues are still of the view that *Florida Power* can further be dismissed as it affects our prior rule that all supervisors are necessarily within the ambit of Sec. 8(b)(1)(B). See, e.g., *Operating Engineers, Local No. 501 (Anheuser Busch, Inc.)*, 199 NLRB 551 (1972).

In *Oakland Mailers* it was "reasonably likely" because in the future the supervisor would again be engaged in the very same activity for which he was disciplined previously — that the supervisor might feel he could, so to speak, be burned twice comports with a general understanding of human nature. But when the supervisor fined for crossing a picket line is adjusting a grievance several weeks later he is *not* performing the same function for which he was previously fined because he was not fined for adjusting a grievance or anything related thereto. He was fined for crossing the picket line. The reasonable conclusion for the supervisor to draw is that if, once again in the future, he crosses a lawful picket line, he will, once again, be disciplined. The majority cannot be heard to argue that it will be difficult for the supervisor-member to ascribe the discipline to his crossing the line as opposed to his potential to adjust grievances or to represent the employer at the bargaining table. It is indeed "unlikely" and assuredly "unreasonable" for a supervisor, who is, as Supervisor Flood was herein, disciplined for "continu[ing] to work at The Daily Racing Form . . . even though a picket line of New York Typographical Union No. 6 has been posted at that site," to speculate that the manner in which he performed 8(b)(1)(B) functions lay at the root of his difficulty or that the manner in which he performs such functions in the future need be altered. Finally, for a variety of reasons, I do not believe a violation of Section 8(b)(1)(B) can be posted on the theory that to coerce the *supervisor* into siding with the union (or paying the penalty of loss of union benefits) constitutes an impermissible effect on the supervisor's future performance of grievance adjustment

or collective-bargaining functions because it deprives the employer of all the supervisor's services. First, while the dilemma faced by the supervisor is one to which I am sympathetic, it is a plain fact of life that the supervisor cannot reasonably expect to serve two masters without incurring obligations to both. In any event, as noted earlier, the supervisor's dilemma is not the focus of our inquiry because of the absence of statutory protections accorded him. Secondly, the employer's dilemma, namely, the possibility that the supervisor-member may opt to resolve the conflict of loyalty on the side of his union and thereby deprive the employer of his services, is, in the context of alternatives afforded the employer, a self-inflicted dilemma. Like the supervisor, the employer cannot reasonably expect that the benefits gained at the bargaining table resulting from its concession to allow supervisors to remain union members are benefits without a price.[81] Having been afforded the opportunity to refuse to hire union members as supervisors, the opportunity to discharge supervisors for involvement in union affairs, the opportunity to incorporate into a collective-bargaining agreement the permissible extent of a supervisor-member's functioning during a strike and, indeed, the opportunity to provide additional incentives making it worthwhile for all union members to forfeit union benefits upon taking supervisory positions, the employ-

[81]For example, in *Illinois Bell* the company agreed to drop its objections to the inclusion of certain foremen in the collective-bargaining agreement in return for a jurisdictional concession by the union. See Vol. II, p. 61, Appendix to the briefs before the Supreme Court in *Florida Power*. Furthermore, employers will often be the initiator of attempts to include supervisors in the contract's coverage and thereby not face the need to recompense would be supervisors for the substantial loss of benefits forced resignation from the union would otherwise necessitate.

er, having forsaken such opportunities, cannot now be heard to argue that the union is affecting its selection of the very grievance adjustment or collective-bargaining representative it permits to retain union membership.

Because the Board majority continues to ignore the fundamental questions posed by its "relatively straightforward" approach,[32] because the Board majority is, in my view, still wedded to preserving the remnants of its pre-*Florida Power* intrusion into the area of legitimate and substantial intraunion interests, and because I believe union discipline of *all* members for conduct related to and during a strike remains unregulated by Congress[33] and is both outside the line of cases commencing with *Oakland Mailers* and within the line of cases beginning with the Supreme Court's decision in *Allis-Chalmers*,[34] I reject the majority's purported analysis.

If, as the Court said in *Allis-Chalmers*, the union has a substantial interest in disciplining strikebreakers, that analysis ought not to be altered simply because they happen to be in supervisory positions. The thrust against the union as an institution and against its strike function is just as direct and effective.[35]

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[32]The language comes from the majority opinion in *Hammond*.

[33]But see fn. 11, *supra*.

[34]I know of no case not since overruled, and the majority cites none, wherein a violation of Sec. 8(b)(1)(B) has been found in a union's discipline of a supervisor for crossing a picket line.

[35]Gould, *Some Limitations Upon Union Discipline Under the National Labor Relations Act: The Radiations of Allis-Chalmers*, 1970 Duke L.J. 1067, 1128-29.

APPENDIX E.

Chicago Typographical Union No. 16 and Hammond Publishers, Inc. Cases 13-CB-5060 and 13-CB-5157.

March 6, 1975

DECISION AND ORDER

By Members Fanning, Jenkins, Kennedy, and Penello

On July 10, 1974, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, the Charging Party and the General Counsel filed exceptions and supporting briefs, and the Respondent filed a brief in answer to the exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge decided the instant case shortly after the Supreme Court's decision in *Florida Power & Light Co. v. I.B.E.W., Local 641*, 417 U.S. 790 (1974).[1] The Administrative Law Judge concluded, on the basis of *Florida Power*, that the Respondent had not violated Section 8(b)(1)(B) of the Act by disciplining two of its supervisor-members who worked behind Respondent's picket line during a lawful strike.[2] This conclusion was based on the

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[1]The Supreme Court held therein that a union did not violate Sec. 8(b)(1)(B) by disciplining supervisor-members who crossed lawful picket lines to perform rank-and-file struck work.

[2]Andress and Palmer, who were both found by the Administrative Law Judge to be 2(11) supervisors and 8(b)(1)(B)

(This footnote is continued on next page)

following findings.[3] The Administrative Law Judge found that the nature of the work performed[4] by Andress and Palmer during the work stoppage had not been a factor in Respondent's decision to discipline Andress and Palmer and that, on all the evidence, Respondent's only motivation in imposing the discipline was to "keep those it construed subject to its discipline from working during a work stoppage."[5]

representatives, were charged with and found guilty of "ratting" and thereafter fined by and expelled from the Respondent. The Administrative Law Judge concluded, from the credited testimony of one of Respondent's witnesses, that "ratting" concerned remaining at work in a struck office.

[3]These findings, while pertinent to the motivational rationale of the dissent, are of no moment under our analysis. We observe, however, as noted *infra*, that these findings are supported by the record.

[4]Andress, who was characterized by the Administrative Law Judge as "a frank, forthright, and candid witness," testified that his duties as production manager remained the same during the work stoppage as before, and that he did not perform any additional functions in the composing room during this time. He stated that between August 23, 1973, and September 10, 1973, he "put in 22 hours a day" and that during this time he performed at most 35 minutes per day of what might be contended to be composing room work such as going to the file room to get ads and putting some tapes through a reader. Andress stated that he stopped performing even these tasks on September 10, 1973, when Palmer returned to work. Palmer testified, and the Administrative Law Judge found, that he resumed his normal functions as the composing room foreman when he returned to work on September 10, 1973. Palmer testified that he performed several acts in the composing room upon returning to work which, prior to August 23, 1973, were normally performed by unit employees. In respect to these tasks the Administrative Law Judge stated: "The facts relating to his work thereafter reveal at most a minimal amount of work performed by Palmer which might be described as non-supervisory unit work."

[5]The dissent would have us believe, under its motivational type analysis of *Florida Power*, that the instant case falls "squarely within the Supreme Court's teaching" or that the instant case "is an exact copy of *Florida Power*." We believe, to the contrary,

We believe that the Administrative Law Judge has misinterpreted the Supreme Court's decision in erroneously finding that the Respondent had not violated Section 8(b)(1)(B) of the Act by disciplining Andress and Palmer. We do not read the Supreme Court's

that they had performed struck work during the strike. between the two cases. In the instant case, both the evidence and the Administrative Law Judge's conclusions establish that the Respondent's acts of discipline toward the supervisor-members herein were not the result of the alleged belief of Respondent that the supervisor-members were performing bargaining unit work. In fact, the Administrative Law Judge held, while discrediting any testimony to the contrary, that "I am persuaded that the totality of the evidence reveals that it made no difference to Respondent whether Andress or Palmer were engaged in bargaining unit work or supervisory work." In contrast to this situation of the instant case, it is apparent to us that the supervisor-members in both *Florida Power* and *Illinois Bell* were disciplined precisely because the unions therein believed that they had performed struck work work during the strike. That this is so seems apparent from the decisions of the Board. *International Brotherhood of Electrical Workers, AFL-CIO, and Local 134, IBEW (Illinois Bell Telephone Company)*, 192 NLRB 85 (1971); *International Brotherhood of Electrical Workers System Council U-4, et al. (Florida Power & Light Company)*, 193 NLRB 30 (1971) (wherein the Board treated the fines as having been imposed as a result of the supervisors' performance of struck work), the decision of the Circuit Court in *Illinois Bell*, 487 F.2d 1143 (C.A.D.C., 1973) (wherein the court observed "Section 8(b)(1)(B) cannot reasonably be read to prohibit discipline of union members—supervisors though they be—for performance of rank-and-file struck work"), the decision of the Supreme Court in *Florida Power & Light*, 417 U.S. 790 (1974) (wherein the Court observed "we hold that the respondent unions did not violate Section 8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing rank and file struck work"), and the very words of our dissenting colleague, *infra*, that: "it is the performance of *rank-and-file* functions which gave rise to the issue in *Florida Power*," and also at fn. 19, *infra*, "It should. then, be clear that the performance of the work of the striking member, whether it be sole or partial was the heart of the matter." Given this crucial difference between the two cases, we do not perceive how, even under a motivational analysis, the actions of the Respondent herein can be sanctioned under *Florida Power*.

decision as turning on a determination of the motivation behind a union's act of discipline, but rather on a determination of the reasonable effect of that discipline on the supervisor's activities as an 8(b)(1)(B) representative.[6] As stated by the Supreme Court:

> The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8 (b)(1)(B) only *when that discipline may adversely affect the supervisor's conduct* in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer. [Emphasis supplied.]

The further question of "when that discipline may adversely affect the supervisor's conduct . . ." clearly depends on an analysis of the activity engaged in by the supervisor during the period for which the discipline is imposed, rather than on an evaluation of the union's motivation. That this is so seems apparent from the Supreme Court's treatment in *Florida Power* of the Board's decision in *San Francisco-Oakland Mailers' Union No. 18, International Typographical Union (Northwest Publications, Inc.)*, 172 NLRB 2173 (1968). By assuming without deciding that *Oakland-Mailers'* fell within the outer limits of its test, the Supreme Court has implicitly recognized that an adverse

[6]This interpretation is but a recognition of the common law rule that a man is held to have intended the foreseeable consequences of his conduct. *The Radio Officers' Union of the Commercial Telegraphers Union, AFL [A. H. Bull Steamship Company] v. N.L.R.B.*, 347 U.S. 17 (1954).

carryover effect may result where the disciplined supervisor had been engaged in the activity of contract interpretation.[7]

The application of the effect test is relatively straightforward in extreme situations where the disciplined supervisor has engaged either *only* in the performance of supervisory activities (not limited to grievance adjustment or collective bargaining), or *only* in the performance of rank-and-file struck work.[8] In the former there is clearly a violation since it is reasonably likely

[7]We note that in discussing *Oakland Mailers'* the Supreme Court recognized that: "the Board had reasoned that the natural and foreseeable effect of such discipline was that in interpreting the agreement in the future, the supervisor would be reluctant to take a position adverse to that of the union."

[8]While there is some question whether or not any of the disciplined supervisors in the cases before the Supreme Court in *Florida Power* perform *only* rank-and-file struck work, we believe that the Supreme Court disregarded, for the purpose of its decision, the possibility that some of these supervisors may have performed some supervisory functions during the work stoppage. This follows, we feel, for at least two reasons. First, the decision makes no mention whatsoever that any of the supervisors performed any supervisory functions during any of the disputes. Rather, the decision speaks in terms of supervisors who crossed picket lines to engage in the performance of rank-and-file work. This suggests to us that the amount of supervisory work performed, if any at all, must have been very small and of minor significance in comparison to the unit work performed by the supervisors who were disciplined. Second, the Supreme Court characterized the disciplined supervisors in the cases before it as not being "engaged in collective bargaining or grievance adjustment, or *any activities related thereto, when they crossed* union picket lines during an economic strike *to engage in rank and file struck work.*" (Emphasis supplied.) This telling factual characterization by the Court does not fit the facts of the instant case. In the instant case, it appears clear to us that Andress and Palmer crossed the picket line to perform supervisory functions and only incidental thereto did they perform a minimal amount of what might arguably be called unit work. They did not, as revealed by the very nature of their activities, cross the picket line to engage in rank-and-file struck work.

that an adverse effect will carry over to the supervisor's performance of his 8(b)(1)(B) duties where he is disciplined after having engaged only in the performance of supervisory duties.[9] In the latter, there is no violation since it is not reasonably likely that an adverse effect will carry over where the supervisor has engaged in the performance of only rank-and-file struck work.[10]

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[9]This conclusion appears to be anticipated by both the majority and dissenting opinions in *Florida Power*. At fn. 22, the majority stated, in the course of discussing how the petitioners had exaggerated the dilemma of the supervisors' conflict of loyalties, that: "Those [Illinois Bell supervisors] who did work during the strike but performed only their regular duties were not disciplined by the union. In Florida Power . . . the union did not discipline those who did so [crossed the picket line] only to perform their normal supervisory functions." Mr. Justice White stated, at fn. 2 of the dissent, that: "I do not read the Court to say that §8(b)(1)(B) would allow a union to discipline supervisor-members for performing supervisory or management functions, as opposed to customary rank-and-file work, during a labor dispute."

We note with interest the position of the dissent which seems to suggest that there would be no violation of Sec. 8(b)(1)(B), regardless of the activity engaged in by the disciplined supervisor-member, unless the discipline is "directed to the manner in which he performs" his normal functions. It is not altogether clear from the dissent whether the phrase his "normal functions" encompasses the performance of all supervisory duties or only grievance adjustment or collective-bargaining duties. Despite this lack of clarity, it would seem that under the dissent there would be no violation even though the only activity engaged in by the disciplined supervisor-member was that of grievance adjustment or collective bargaining, as long as the union discipline was not directed at the "manner in which he performs those functions." We do not perceive the Supreme Court's opinion as so narrowly limiting Sec. 8(b)(1)(B) of the Act.

[10]As stated in *International Brotherhood of Electrical Workers, AFL-CIO (Illinois Bell) v. N.L.R.B.*, 487 F.2d 1143, 1157 (C.A.D.C., 1973):

> [W]hen a supervisor foresakes his supervisory role to do rank-and-file work ordinarily the domain of nonsupervisory employees, he is no longer acting as a management representative and no longer merits any immunity from discipline. . . . There is accordingly no reason to believe that by being forced to take sides with the union in a dispute unrelated to the performance of his supervisory functions, and to take sides only to the extent of withholding his labor from rank-and-file nonsupervisory work, a supervisor will suffer from a change in attitude when, after the strike, he returns to the performance of his normal supervisory duties.

The instant case, in contrast to these extreme situations, presents a factual setting where the disciplined supervisors performed not only supervisory duties (including grievance adjusting) but also, at least arguably, a minimal amount of rank-and-file struck work during the work stoppage.[11] We believe that the Respondent's

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[11]While the Administrative Law Judge failed to conclude whether Andress or Palmer actually performed any rank-and-file struck work, the record itself reveals that they may have performed, at most, a minimal amount of this work during the work stoppage. See, fn. 4, *supra*. Our dissenting colleague questions the assertion that Andress and Palmer performed at most a minimal amount of rank-and-file work. In support of this skepticism the dissent cites the reduction of the work force from 110 before the work stoppage to 10 immediately after the work stoppage. An examination of Andress' testimony reveals that it is indeed probable that Andress and Palmer performed at most a minimal amount of what might be characterized as rank-and-file work. Andress testified that there were 10 other individuals, in addition to the publisher and himself, working in the composing room immediately following the work stoppage. Of these 10, 3 or 4 were from other departments and were experienced in computer work but not in composing room work. The remaining six to seven were experienced in composing room work by virtue of their employment with other papers owned by Hammond Publications, the parent corporation. Andress further testified that all of these workers worked from 20-22 hours per day. Andress also testified to the elimination of some procedures and the addition of other new procedures and some advanced equipment (some of the computer type) and the development of a newly designed composing room. Some functions were also performed in other areas of Hammond's facilities. On and after September 3, 1973, new employees, some with composing room experience, were

(This footnote is continued on next page)

acts of discipline in the instant case violated Section 8(b)(1)(B) notwithstanding the fact that Palmer and Andress may have performed a minimal amount of rank-and-file struck work. This follows, we feel, since under our view of *Florida Power* it makes no difference whether a supervisor performs a minimal amount of struck work because it is still reasonably likely that an adverse effect may carry over to the supervisor's performance of his 8(b)(1)(B) duties when he is disciplined after having performed substantially only supervisory functions and only a minimal amount of what might arguably be called rank-and-file struck work during a work stoppage.

We do not believe that this analysis conflicts in any way with the Supreme Court's treatment of the issue of a supervisor-member's conflict of loyalties. The Supreme Court stated that an employer may not permit a supervisor to become a union member and yet continue to be able to demand "absolute loyalty" from that supervisor. We interpret this to mean that an employer who permits his supervisors to become union members may no longer demand the loyalty of these supervisors if they cross a picket line and in effect, substitute their services for those of the rank-and-file employees. In this same regard, however, we do not believe that the Supreme Court's decision is so broad that it means that an employer surrenders his right to require the loyalty of these same supervisors when they cross a picket line and thereafter perform substantial supervisory functions, even though incidental

interviewed and hired by Andress. Thus, Andress testified that he hired 3 to 4 new employees on about September 3, 1973, and that by mid-December 1973, he had hired around 33 new employees (the original 10 went back to their other jobs).

thereto they also arguably perform a minimal amount of rank-and-file struck work.[12]

In sum, due to the fact that these supervisor-members crossed Respondent's picket line and thereafter performed substantially the same duties as they had done before the strike, which were principally or only supervisory functions (including grievance adjusters), we find that Respondent has violated Section 8(b)(1)(B) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board thereby orders that the Respondent, Chicago Typographical Union No. 16, Chicago, Illinois, its officers, agents, and representatives, shall:

1. Cease and desist from restraining or coercing Hammond Publishers, Inc., in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances:

(a) By fining, expelling, otherwise disciplining, or attempting by any means to collect or enforce any

[12]In the words of the majority of the circuit court in *International Brotherhood of Electrical Workers, AFL-CIO* [*Illinois Bell*] *v. N.L.R.B.*, 487 F.2d 1143, 1169-70 (C.A.D.C., 1973):

> If the employer, however, chooses not to exercise his rights under that section [14(a)], permits his supervisors to join unions . . . the employer cannot still insist on the supervisors' undivided loyalty in *every* union-employer dispute no matter how unrelated the subject of that dispute is to the supervisory function. . . .
>
> This is not to say, of course, that by permitting his supervisors to join unions the employer *completely* waives his right to their loyalty. Even if he permits them to join unions, Section 8(b)(1)(B), as interpreted by *Oakland Mailers* and *Meat Cutters*, immunizes them from union discipline imposed for the manner in which they perform their supervisory functions. [Emphasis supplied.]

following findings.[3] The Administrative Law Judge found that the nature of the work performed[4] by Andress and Palmer during the work stoppage had not been a factor in Respondent's decision to discipline Andress and Palmer and that, on all the evidence, Respondent's only motivation in imposing the discipline was to "keep those it construed subject to its discipline from working during a work stoppage."[5]

representatives, were charged with and found guilty of "ratting" and thereafter fined by and expelled from the Respondent. The Administrative Law Judge concluded, from the credited testimony of one of Respondent's witnesses, that "ratting" concerned remaining at work in a struck office.

[3]These findings, while pertinent to the motivational rationale of the dissent, are of no moment under our analysis. We observe, however, as noted *infra*, that these findings are supported by the record.

[4]Andress, who was characterized by the Administrative Law Judge as "a frank, forthright, and candid witness," testified that his duties as production manager remained the same during the work stoppage as before, and that he did not perform any additional functions in the composing room during this time. He stated that between August 23, 1973, and September 10, 1973, he "put in 22 hours a day" and that during this time he performed at most 35 minutes per day of what might be contended to be composing room work such as going to the file room to get ads and putting some tapes through a reader. Andress stated that he stopped performing even these tasks on September 10, 1973, when Palmer returned to work. Palmer testified, and the Administrative Law Judge found, that he resumed his normal functions as the composing room foreman when he returned to work on September 10, 1973. Palmer testified that he performed several acts in the composing room upon returning to work which, prior to August 23, 1973, were normally performed by unit employees. In respect to these tasks the Administrative Law Judge stated: "The facts relating to his work thereafter reveal at most a minimal amount of work performed by Palmer which might be described as non-supervisory unit work."

[5]The dissent would have us believe, under its motivational type analysis of *Florida Power*, that the instant case falls "squarely within the Supreme Court's teaching" or that the instant case "is an exact copy of *Florida Power*." We believe, to the contrary,

We believe that the Administrative Law Judge has misinterpreted the Supreme Court's decision in erroneously finding that the Respondent had not violated Section 8(b)(1)(B) of the Act by disciplining Andress and Palmer. We do not read the Supreme Court's

that they had performed struck work during the strike. between the two cases. In the instant case, both the evidence and the Administrative Law Judge's conclusions establish that the Respondent's acts of discipline toward the supervisor-members herein were not the result of the alleged belief of Respondent that the supervisor-members were performing bargaining unit work. In fact, the Administrative Law Judge held, while discrediting any testimony to the contrary, that "I am persuaded that the totality of the evidence reveals that it made no difference to Respondent whether Andress or Palmer were engaged in bargaining unit work or supervisory work." In contrast to this situation of the instant case, it is apparent to us that the supervisor-members in both *Florida Power* and *Illinois Bell* were disciplined precisely because the unions therein believed that they had performed struck work work during the strike. That this is so seems apparent from the decisions of the Board. *International Brotherhood of Electrical Workers, AFL-CIO, and Local 134, IBEW (Illinois Bell Telephone Company)*, 192 NLRB 85 (1971); *International Brotherhood of Electrical Workers System Council U-4, et al. (Florida Power & Light Company)*, 193 NLRB 30 (1971) (wherein the Board treated the fines as having been imposed as a result of the supervisors' performance of struck work), the decision of the Circuit Court in *Illinois Bell*, 487 F.2d 1143 (C.A.D.C., 1973) (wherein the court observed "Section 8(b)(1)(B) cannot reasonably be read to prohibit discipline of union members—supervisors though they be—for performance of rank-and-file struck work"), the decision of the Supreme Court in *Florida Power & Light*, 417 U.S. 790 (1974) (wherein the Court observed "we hold that the respondent unions did not violate Section 8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing rank and file struck work"), and the very words of our dissenting colleague, *infra*, that: "it is the performance of *rank-and-file* functions which gave rise to the issue in *Florida Power*," and also at fn. 19, *infra*, "It should. then, be clear that the performance of the work of the striking member, whether it be sole or partial was the heart of the matter." Given this crucial difference between the two cases, we do not perceive how, even under a motivational analysis, the actions of the Respondent herein can be sanctioned under *Florida Power*.

decision as turning on a determination of the motivation behind a union's act of discipline, but rather on a determination of the reasonable effect of that discipline on the supervisor's activities as an 8(b)(1)(B) representative.[6] As stated by the Supreme Court:

> The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8 (b)(1)(B) only *when that discipline may adversely affect the supervisor's conduct* in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer. [Emphasis supplied.]

The further question of "when that discipline may adversely affect the supervisor's conduct . . ." clearly depends on an analysis of the activity engaged in by the supervisor during the period for which the discipline is imposed, rather than on an evaluation of the union's motivation. That this is so seems apparent from the Supreme Court's treatment in *Florida Power* of the Board's decision in *San Francisco-Oakland Mailers' Union No. 18, International Typographical Union (Northwest Publications, Inc.)*, 172 NLRB 2173 (1968). By assuming without deciding that *Oakland-Mailers'* fell within the outer limits of its test, the Supreme Court has implicitly recognized that an adverse

[6]This interpretation is but a recognition of the common law rule that a man is held to have intended the foreseeable consequences of his conduct. *The Radio Officers' Union of the Commercial Telegraphers Union, AFL [A. H. Bull Steamship Company] v. N.L.R.B.*, 347 U.S. 17 (1954).

carryover effect may result where the disciplined supervisor had been engaged in the activity of contract interpretation.[7]

The application of the effect test is relatively straightforward in extreme situations where the disciplined supervisor has engaged either *only* in the performance of supervisory activities (not limited to grievance adjustment or collective bargaining), or *only* in the performance of rank-and-file struck work.[8] In the former there is clearly a violation since it is reasonably likely

[7]We note that in discussing *Oakland Mailers'* the Supreme Court recognized that: "the Board had reasoned that the natural and foreseeable effect of such discipline was that in interpreting the agreement in the future, the supervisor would be reluctant to take a position adverse to that of the union."

[8]While there is some question whether or not any of the disciplined supervisors in the cases before the Supreme Court in *Florida Power* perform *only* rank-and-file struck work, we believe that the Supreme Court disregarded, for the purpose of its decision, the possibility that some of these supervisors may have performed some supervisory functions during the work stoppage. This follows, we feel, for at least two reasons. First, the decision makes no mention whatsoever that any of the supervisors performed any supervisory functions during any of the disputes. Rather, the decision speaks in terms of supervisors who crossed picket lines to engage in the performance of rank-and-file work. This suggests to us that the amount of supervisory work performed, if any at all, must have been very small and of minor significance in comparison to the unit work performed by the supervisors who were disciplined. Second, the Supreme Court characterized the disciplined supervisors in the cases before it as not being "engaged in collective bargaining or grievance adjustment, or *any activities related thereto, when they crossed* union picket lines during an economic strike *to engage in rank and file struck work.*" (Emphasis supplied.) This telling factual characterization by the Court does not fit the facts of the instant case. In the instant case, it appears clear to us that Andress and Palmer crossed the picket line to perform supervisory functions and only incidental thereto did they perform a minimal amount of what might arguably be called unit work. They did not, as revealed by the very nature of their activities, cross the picket line to engage in rank-and-file struck work.

that an adverse effect will carry over to the supervisor's performance of his 8(b)(1)(B) duties where he is disciplined after having engaged only in the performance of supervisory duties.[9] In the latter, there is no violation since it is not reasonably likely that an adverse effect will carry over where the supervisor has engaged in the performance of only rank-and-file struck work.[10]

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[9]This conclusion appears to be anticipated by both the majority and dissenting opinions in *Florida Power*. At fn. 22, the majority stated, in the course of discussing how the petitioners had exaggerated the dilemma of the supervisors' conflict of loyalties, that: "Those [Illinois Bell supervisors] who did work during the strike but performed only their regular duties were not disciplined by the union. In Florida Power . . . the union did not discipline those who did so [crossed the picket line] only to perform their normal supervisory functions." Mr. Justice White stated, at fn. 2 of the dissent, that: "I do not read the Court to say that §8(b)(1)(B) would allow a union to discipline supervisor-members for performing supervisory or management functions, as opposed to customary rank-and-file work, during a labor dispute."

We note with interest the position of the dissent which seems to suggest that there would be no violation of Sec. 8(b)(1)(B), regardless of the activity engaged in by the disciplined supervisor-member, unless the discipline is "directed to the manner in which he performs" his normal functions. It is not altogether clear from the dissent whether the phrase his "normal functions" encompasses the performance of all supervisory duties or only grievance adjustment or collective-bargaining duties. Despite this lack of clarity, it would seem that under the dissent there would be no violation even though the only activity engaged in by the disciplined supervisor-member was that of grievance adjustment or collective bargaining, as long as the union discipline was not directed at the "manner in which he performs those functions." We do not perceive the Supreme Court's opinion as so narrowly limiting Sec. 8(b)(1)(B) of the Act.

[10]As stated in *International Brotherhood of Electrical Workers, AFL-CIO (Illinois Bell) v. N.L.R.B.*, 487 F.2d 1143, 1157 (C.A.D.C., 1973):

> [W]hen a supervisor foresakes his supervisory role to do rank-and-file work ordinarily the domain of nonsupervisory employees, he is no longer acting as a management representative and no longer merits any immunity from discipline. . . . There is accordingly no reason to believe that by being forced to take sides with the union in a dispute unrelated to the performance of his supervisory functions, and to take sides only to the extent of withholding his labor from rank-and-file nonsupervisory work, a supervisor will suffer from a change in attitude when, after the strike, he returns to the performance of his normal supervisory duties.

The instant case, in contrast to these extreme situations, presents a factual setting where the disciplined supervisors performed not only supervisory duties (including grievance adjusting) but also, at least arguably, a minimal amount of rank-and-file struck work during the work stoppage.[11] We believe that the Respondent's

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[11]While the Administrative Law Judge failed to conclude whether Andress or Palmer actually performed any rank-and-file struck work, the record itself reveals that they may have performed, at most, a minimal amount of this work during the work stoppage. See, fn. 4, *supra*. Our dissenting colleague questions the assertion that Andress and Palmer performed at most a minimal amount of rank-and-file work. In support of this skepticism the dissent cites the reduction of the work force from 110 before the work stoppage to 10 immediately after the work stoppage. An examination of Andress' testimony reveals that it is indeed probable that Andress and Palmer performed at most a minimal amount of what might be characterized as rank-and-file work. Andress testified that there were 10 other individuals, in addition to the publisher and himself, working in the composing room immediately following the work stoppage. Of these 10, 3 or 4 were from other departments and were experienced in computer work but not in composing room work. The remaining six to seven were experienced in composing room work by virtue of their employment with other papers owned by Hammond Publications, the parent corporation. Andress further testified that all of these workers worked from 20-22 hours per day. Andress also testified to the elimination of some procedures and the addition of other new procedures and some advanced equipment (some of the computer type) and the development of a newly designed composing room. Some functions were also performed in other areas of Hammond's facilities. On and after September 3, 1973, new employees, some with composing room experience, were

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acts of discipline in the instant case violated Section 8(b)(1)(B) notwithstanding the fact that Palmer and Andress may have performed a minimal amount of rank-and-file struck work. This follows, we feel, since under our view of *Florida Power* it makes no difference whether a supervisor performs a minimal amount of struck work because it is still reasonably likely that an adverse effect may carry over to the supervisor's performance of his 8(b)(1)(B) duties when he is disciplined after having performed substantially only supervisory functions and only a minimal amount of what might arguably be called rank-and-file struck work during a work stoppage.

We do not believe that this analysis conflicts in any way with the Supreme Court's treatment of the issue of a supervisor-member's conflict of loyalties. The Supreme Court stated that an employer may not permit a supervisor to become a union member and yet continue to be able to demand "absolute loyalty" from that supervisor. We interpret this to mean that an employer who permits his supervisors to become union members may no longer demand the loyalty of these supervisors if they cross a picket line and in effect, substitute their services for those of the rank-and-file employees. In this same regard, however, we do not believe that the Supreme Court's decision is so broad that it means that an employer surrenders his right to require the loyalty of these same supervisors when they cross a picket line and thereafter perform substantial supervisory functions, even though incidental

interviewed and hired by Andress. Thus, Andress testified that he hired 3 to 4 new employees on about September 3, 1973, and that by mid-December 1973, he had hired around 33 new employees (the original 10 went back to their other jobs).

thereto they also arguably perform a minimal amount of rank-and-file struck work.[12]

In sum, due to the fact that these supervisor-members crossed Respondent's picket line and thereafter performed substantially the same duties as they had done before the strike, which were principally or only supervisory functions (including grievance adjusters), we find that Respondent has violated Section 8(b)(1)(B) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board thereby orders that the Respondent, Chicago Typographical Union No. 16, Chicago, Illinois, its officers, agents, and representatives, shall:

1. Cease and desist from restraining or coercing Hammond Publishers, Inc., in the selection of representatives for the purpose of collective bargaining or the adjustment of grievances:

(a) By fining, expelling, otherwise disciplining, or attempting by any means to collect or enforce any

[12]In the words of the majority of the circuit court in *International Brotherhood of Electrical Workers, AFL-CIO* [*Illinois Bell*] *v. N.L.R.B.*, 487 F.2d 1143, 1169-70 (C.A.D.C., 1973):

> If the employer, however, chooses not to exercise his rights under that section [14(a)], permits his supervisors to join unions . . . the employer cannot still insist on the supervisors' undivided loyalty in *every* union-employer dispute no matter how unrelated the subject of that dispute is to the supervisory function. . . .
>
> This is not to say, of course, that by permitting his supervisors to join unions the employer *completely* waives his right to their loyalty. Even if he permits them to join unions, Section 8(b)(1)(B), as interpreted by *Oakland Mailers* and *Meat Cutters*, immunizes them from union discipline imposed for the manner in which they perform their supervisory functions. [Emphasis supplied.]

fine or discipline imposed against any such representative, including Norman E. Andress and Vernon M. Palmer, who performs substantially only supervisory functions for Hammond Publishers, Inc., while Respondent is engaged in a labor dispute with that employer.

(b) By engaging in any like or related conduct constituting such restraint or coercion.

2. Take the following affirmative actions which, we find, will effectuate the policies of the Act:

(a) Rescind and expunge all records of the fine and expulsion levied against Norman E. Andress on November 25, 1973, and against Vernon M. Palmer on December 30, 1973, after they had performed substantially only supervisory functions for Hammond Publishers, Inc., while Respondent was engaged in a labor dispute with that employer.

(b) Advise Norman E. Andress and Vernon M. Palmer in writing that the said fines and expulsions have been rescinded and that the records of such fines and expulsion have been expunged.

(c) Post at its business office and meeting hall copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reason-

[13]In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

able steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Furnish the Regional Director for Region 13 with signed copies of said notice for posting by Hammond Publishers, Inc., if willing, in places where notices to employees are customarily posted.

(e) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

MEMBER FANNING, dissenting:

The facts of the case, the law as set out in the Supreme Court's decision in *Florida Power*,[14] and the force of reason have all, in turn, been denied their due by the majority. I, therefore, am compelled to dissent.

On August 23, 1972, the employees of the composing room at Hammond Publishers set up a picket line in response to certain changes in working conditions instituted by Hammond.

Immediately prior to the work stoppage, there were approximately 110 employees, all of whom were journeymen, employed in the composing room. Hammond had not hired an apprentice in some 6 years. All the 110 journeyman printers participated in the work stoppage. The following day, Hammond's production manager, Andress, an admitted supervisor with extensive top-level management duties, crossed the picket line and, literally, moved into the composing room. He was

[14]*Florida Power & Light Company v. International Brotherhood of Electrical Workers, Locals 641, 622, 759, 820 and 1263; N.L.R.B. v. International Brotherhood of Electrical Workers, AFL-CIO*, 417 U.S. 790 (1974).

joined by approximately 10 other employees, 7 of which Hammond had secured from various other companies within its organization. Of these latter employees, none were even apprentices at the trade. Approximately three had some composing room experience but not in the work over which Respondent has jurisdiction. The record does not detail its exact function, but an essential process in production is performed by the "505 photographic unit." Prior to August 23, only three employees were trained in its operation. Two of those employees were engaged in the work stoppage—the third was Andress. According to his own testimony, it took Andress 2 or 3 weeks of training given by the manufacturer to learn the operation of the 505 in addition to "several months" of concurrent textbook study. The mechanical operation of the machine is, according to Andress, quite simple and can be taught in a matter of moments; however, when problems arise with the machine more extensive knowledge is required.

As to the composing room itself, Andress testified that immediately upon commencement of the picketing:

> All windows were completely sealed; the doors were kept under lock; there was no exit in or out of the composing room unless it was okayed by me by getting in or out. There was also, as I said, all the windows were completely blanked over so there was no way of anyone seeing into the composing room what was going on at that particular time. . . . We had a guard at two areas.

These conditions existed at Hammond for the extent of Andress' stay in the composing room.[15] Andress

[15]With the exception that Hammond began, around September 3, to hire additional replacements. By the time of the hearing, the work stoppage was still in progress and Hammond had hired a total of 33 replacements for the 110 journeyman printers.

returned to his usual duties on September 10, 1974, when he was replaced by Palmer, the foreman of the composing room. Palmer had participated in the work stoppage from August 23 to September 9.

Both Andress and Palmer testified that while behind the picket line they performed work which normally would have been performed by rank-and-file employees had there not been a strike, i.e., Andress and Palmer, by their own words, admitted performing struck work, albeit they characterized the extent of struck work performed as "minimal."

Although Hammond had sealed off the composing room, various reports from maintenance men and guards filtered down to the Respondent that Andress and Palmer were performing the work of the striking employees. Thus, on four occasions the Respondent was advised that Andress was "running the machine," "working the 505," and "putting tapes on the machine." On at least eight occasions the Respondent was informed that Palmer was doing the work of the striking employees.

Throughout the August 23—September 9 period that Andress worked in the composing room, he had voluntarily maintained his union membership in the face of high-level management responsibilities, so that he would not lose the insurance and mortuary benefits he had accrued while working at the trade. Palmer, as foreman of the composing room, was required to be a union member under the collective-bargaining agreement.[16] Ultimately, both were informed that

[16]Immediately prior to crossing the picket line, Palmer attempted to resign from Respondent. The question of the legality

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charges were being brought against them for "ratting." Neither Andress nor Palmer attended his hearing on the charges. Both trial committees were told that both had, according to reports, performed the work of employees engaged in the work stoppage. The record further establishes that both trial committees had expressed concern with the hearsay nature of the charge that Andress and Palmer had performed struck work, but, given their failure to appear, coupled with the secrecy with which their actions were undertaken, little choice remained but to recommend guilty verdicts. Both Andress and Palmer were notified that any defenses they might have offered to the trial committees would not be deemed waived upon their attendance at the union meeting which would consider the trial committees' recommendations. Both Andress and Palmer failed to appear. They were offered the opportunity to appeal. Both Andress and Palmer did not appeal.[17] Both Andress and Palmer were fined $1,000 and expelled from Respondent.

On these facts, the majority finds that Hammond was restrained or coerced in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

This case, in my view, is controlled by *Florida Power*. Because of certain statements made by the

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of disciplining a member who has attempted to resign from the Union is not in issue in this case. It was neither charged, nor litigated, and, in the words of counsel for the General Counsel. "I want to make it crystal clear this is not General Counsel's theory. General Counsel's theory is the Illinois Bell theory."

[17]Palmer, in fact, had refused to sign for the certified mail delivered to him notifying him of the trial committee meeting.

majority, it is necessary to clarify what that case (and its companion case, *N.L.R.B. v. International Brotherhood of Electrical Workers, and Local 134, IBEW (Illinois Bell Telephone Company)*, 487 F.2d 1143), involved. The complaint in *Florida Power* charged the respondent unions with violation of Section 8(b)(1)(B) because the unions fined certain supervisors who *"continued* working for Florida Power and crossed Respondent's picket lines as required in order to do so" (emphasis supplied). The case came to the Board on stipulated facts. The stipulation indicated that the fined supervisors "performed bargaining unit work." There was no indication that the supervisors performed "only" bargaining unit work. In point of fact, the Board's original decision in *Florida Power* stated that "the Company's supervisors routinely crossed the picket line during the course of the strike and *performed work, including unit work for the company.*"[18]

In the companion *Illinois Bell* case, the supervisors, according to the General Counsel's complaint, "worked *and/or supervised* the performance of work on behalf of the Employer" (emphasis supplied). A hearing was conducted in the case during which all parties stipulated that the fined supervisors "during the same period performed work of a supervisory nature." At least one fined supervisor testified that besides performing rank-and-file work, "I acted in the capacity of a supervisor to other people who were performing work during the strike."

As a point of logic and given the clear, irrefutable facts of both *Florida Power* and *Illinois Bell*, I am at a loss to understand the majority's "doubt" as to

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[18]193 NLRB 30 (1971). (Emphasis supplied.)

whether the supervisors involved performed "only" rank-and-file work. They clearly did not.

What is true about *Florida Power* is that we know neither the extent of the supervisory functions engaged in by the supervisors involved nor the extent of the rank-and-file work they performed, but that lack of knowledge is merely the result of its irrelevance because it was the performance of rank-and-file functions which gave rise to the issue in *Florida Power*.[19] It should be apparent, then, that the Board may, in fact, be deciding a case which is an exact copy of *Florida Power* as it relates to the proportion of rank and-file versus supervisory functions engaged in by some supervisors disciplined therein and yet, anomalously, reaching an opposite result.[20]

Once it is understood that the supervisors in *Florida Power*, beyond a suggestion of doubt, performed rank-and-file struck work *and* continued in part to perform their supervisory functions behind the picket line, this case falls squarely within the Supreme Court's teaching because the supervisors involved herein were similarly engaged. It is not "arguable" that they performed rank-

[19]In addressing the so-called dilemma faced by the supervisor-member, the Court did point out that those supervisors who performed *only* their regular duties or normal supervisory functions were not disciplined by the union. 417 U.S. at 812, fn. 22. It should, then, be clear that the performance of the work of the striking member, whether it be sole or partial, was the heart of the matter.

[20]The majority is apparently confusing those cases in which the Court issues decisions arguably *broader* than the facts before it with its novel theory that the Court has, indeed is empowered, to issue a decision *narrower* than the facts before it. If the Court could do the latter, it would be, in effect, not deciding the case at all and, as in this case, causing relitigation of the precisely same issues.

and-file work, they *admitted* doing it,[21] and like the supervisors in *Florida Power* were disciplined for "working during the strike."[22]

[21]What is "arguable" is the credibility of the assertion that the extent of the performance of rank-and-file work was "minimal." Why would the Company seal off, completely, the composing room on the first day of the stoppage? Why is it credible to conclude that Hammond's operations could continue at normal output with the performance of but "minimal" rank-and-file work by Andress or Palmer when 110 journeyman printers are engaged in a work stoppage and are replaced with 10 employees, not even apprentices at the trade, only three of whom have any experience? How, during a work stoppage, is the Union supposed to determine whether struck work is actually being performed, let alone gauge the percentage of struck work? What constitutes "minimal" struck work? The Union in this case had clear reason to presume that the only truly experienced workers in the composing room, Andress and Palmer, were performing its members' work, as numerous reports indicated. The majority opinion, in effect, condones failure to appear at the disciplinary hearing as a means of avoiding any legally sufficient justification for the reasonable conclusion that the supervisors have, in fact, performed struck work.

[22]Although the issue posed in *Florida Power* was whether the respondents therein violated Sec. 8(b)(1)(B) by disciplining those supervisors who performed struck rank-and-file work, it is noted that the supervisors involved were actually notified that the reason for the union's discipline was their "continuing to work during the strike," as the record in that case clearly demonstrates. When those supervisors who worked during the strike took the time to appear before the executive board considering the discipline and testified that although they had worked during the strike they had not performed the work of union members, the respondent therein decided to drop charges. Of course, we do not know whether the same result would have been reached in the instant case because Andress and Palmer did not attend their hearings, but the actual language used to notify them of the reason for the Respondent's attempted inquiry should not lead my colleagues to conclude anything more than that such a fact is further indication of the substantial resemblance of the instant case to the cases involved in *Florida Power*. Counsel for the General Counsel's statement at fn. 16, *supra*, is most interesting on this point given the fact that *Illinois Bell* was ultimately to be overruled.

Even were we to assume that all supervisors in *Florida Power* performed more than "minimal" struck work (an assumption that simply cannot be founded on facts), I still would not accept the majority's conclusion that the performance of "minimal" struck work by supervisors is not a legitimate concern of the union and that its discipline of the supervisors for performance of such work is prohibited by Section 8(b)(1)(B). Again, my colleagues emphasize the supervisory tasks engaged in by those disciplined and not the rank-and-file functions they performed during the strike. It is also clear that, on the facts of this case, it was the performance by the supervisors of the work of its members which gave rise to the Union's attempted inquiry and consequent discipline.[23]

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[23]The Administrative Law Judge concluded that Respondent was motivated against Andress and Palmer because "they worked during the strike." While that may, in fact, be the case, I see no reason why such a conclusion compels a different result. In any event, it is clear to me that Andress' and Palmer's performance of the work of Respondent's members led directly to the initiation of disciplinary proceedings. That fact is substantiated by the numerous instances in the record demonstrating that Respondent's members were upset with Andress' and Palmer's performance of "union" work. Hunt's testimony, upon which the Administrative Law Judge relied, is additional evidence of that view. The Administrative Law Judge discredited testimony which might be "construed as being that the motivation against Andress and Palmer was *pinpointed* to the fact" that they had engaged in rank-and-file work, but it should be obvious that the Administrative Law Judge's interpretation of *Florida Power* did not require an inquiry into whether the Respondent was motivated against these supervisors because they merely "worked" or "performed unit work" but rather only whether the Respondent was motivated against them in an attempt to influence their particular grievance adjustment or collective-bargaining functions. In that sense, the Administrative Law Judge's finding is in the realm of *arguendo*. Whatever the Union's motivation, the fact remains that these supervisors were fined by their Union "for continuing to work" for their Employer and they performed rank-and-file work. The same is true of the supervisors in *Florida Power*.

There can be no relevance to the proportion of rank-and-file to supervisory functions performed by a supervisor during a strike when the question of equity, a basic thrust of the Supreme Court's decision, is considered. Whether supervisors perform 80 percent, 30 percent, or 10 percent rank-and-file work, their actions are equally antithetical to the interests of the union whose membership benefits they simultaneously enjoy. Even apart from the monumental burden the majority imposes upon a union's capacity to protect its substantial interest in strike solidarity by requiring it to overcome the naked assertion of "minimal" rank-and-file activity (as opposed to requiring the General Counsel to overcome the *prima facie* validity of the discipline where rank-and-file activity has been performed), I would dismiss the complaint herein on the basis of *Florida Power*.[24]

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[24]Because these supervisors admittedly performed rank-and-file struck work, I need not consider the validity of the majority's conclusion that a supervisor engaged solely in supervisory duties cannot be disciplined for working during a strike. While recognizing that such a factual setting is one left open by the Supreme Court in *Florida Power*, I do note that many of the considerations which went into the Court's decision are equally pertinent in such a fact pattern, and that the principle of law to be applied remains, in the Court's words, "that a union's discipline of one of its members who is a supervisory employee can constitute a violation of 8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer."

I further note that to the extent a fine, threat of fine or expulsion, the union's bylaws setting forth the membership obligation to observe picket lines, or a picket line itself, may operate to restrain a supervisor-member from reporting to work during the strike to perform his normal functions, such restraint cannot be said to be directed to the manner in which he performs those functions. Although it is true that the restraint

(This footnote is continued on next page)

[The Appendix to the Board's Order and the Decision of the Administrative Law Judge have been omitted.]

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may well deprive the employer of the services of the supervisor during the strike if the supervisor resolves the problem of conflicting loyalties by observance of the picket line, this would seem to be a problem "Congress addressed, not through 8(b)(1)(B), but through a completely different legislative route." See my dissent in *Daily Racing Form, a Subsidiary of Triangle Publications, Inc.*, 216 NLRB No. 147 (1975).

FILED
JUL 26 1977
MICHAEL RODAK, JR., CLERK

APPENDIX (Volume 1; pp. 1-232)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1121, 76-1153 & 76-1162

AMERICAN BROADCASTING COMPANIES, INC., ET AL.,
Petitioners,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI IN NO. 76-1121 FILED FEBRUARY 14, 1977
PETITION FOR CERTIORARI IN NO. 76-1153 FILED FEBRUARY 22, 1977
PETITION FOR CERTIORARI IN NO. 76-1162 FILED FEBRUARY 22, 1977
CERTIORARI GRANTED APRIL 25, 1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1121, 76-1153 & 76-1162

AMERICAN BROADCASTING COMPANIES, INC., ET AL.,
Petitioners,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

NATIONAL LABOR RELATIONS BOARD,
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WRITERS GUILD OF AMERICA, WEST, INC., ET AL.,
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Page
Chronological List of Relevant Docket Entries	1
Second Consolidated Amended Complaint	4
Answer to Second Consolidated Amended Complaint	21

Page

Excerpts from Transcript of Proceedings of hearing before Administrative Law Judge Sidney J. Barban 27

Witnesses:

Sheldon M. Mittleman
Direct Examination 28
Redirect Examination 40

Bernard Barron
Direct Examination 43
Cross Examination 55
Redirect Examination 59
Recross Examination 60
Redirect Examination 60

Sid Sheinberg
Direct Examination 60
Cross Examination 64

David Victor
Direct Examination 72

John Epstein
Direct Examination 76
Cross Examination 80
Redirect Examination 87

Melvin Sattler
Direct Examination 89

Herman Saunders
Direct Examination 92
Cross Examination 98

Jo Swerling, Jr.
Direct Examination 99
Cross Examination 103
Redirect Examination 104

Stephen Heilpern
Direct Examination 104
Cross Examination 106

David Freedman
Direct Examination 107

Frank Paris
Direct Examination 120

John Mantley
Direct Examination 123

Carl Milliken, Jr.
Direct Examination 134

Witnesses:—Continud Page

Michael Crichton
Direct Examination 135
Cross Examination 139
Redirect Examination 140

Paul King
Direct Examination 140
Cross Examination 142

Herbert Wright
Direct Examination 145
Cross Examination 150

Stanley Robertson
Direct Examination 153

Frank R. Pierson
Direct Examination 154
Redirect Examination 158

Sidney Kalcheim
Direct Examination 158

Glen L. Coon
Direct Examination 161
Cross Examination 173

Sheldon Mittleman
Direct Examination 175

Orison S. Marden
Direct Examination 177
Redirect Examination 179

Excerpts from General Counsel's Exhibit 16:

Witnesses:

Cy Chermak
Examination 180

S. S. Schweitzer
Examination 181

Robert A. Cinader
Examination 183

Donald S. Sanford
Examination 191

Samuel Steven Schweitzer
Examination 192

Arnold Shane
Examination 194

Witnesses:—Continud	Page
Harlan Ellison Examination	197
Lindsey Parsons, Jr. Examination	198
S. S. Schweitzer Examination	199
Hugh Benson Examination	201
Arnold Shane Examination	205
Edmund H. North Direct Examination Cross Examination	207 209
William Roberts Direct Examination	209
Richard Moyer Examination	215
S. S. Schweitzer Examination	217
Arnold Shane Examination	218
Carey Wilber Examination	219
Arnold Shane Examination	223
Gene Levitt Examination	224
Robert Blees Declaration	225
Sidney Ellis Direct Examination	226
John T. Mantley Declaration	227
Betty Anderson Examination	228
Cary Wilber Examination	229
Arnold Shane Examination	231

General Counsel's Exhibits:	Page
2 (pages 1-4; 6-8; 18-24; 53, and 128-150)	233
3	293
4	299
5	302
6	305
7	308
8	311
9 (pages 1-4; 6-8; 18-24; 53; and 128-150)	314
12(a) (Pages 1-10 and 14-15)	381
15(a)	398
15(b)	401
15(d)	404
15(g)	407
15(i)	410
15(j)	412
15(k)	415
15(l)	418
15(m)	421
15(n)	424
15(o)	427
15(q)	430
15(r)	433
15(s)	435
15(u)	438
17(e)	441
17(h)	444
17(i)	447
18	450
19	453
20	456
23(b)	459
23(d)	461
23(e)	463
23(f)	465
23(g)	467
23(h)	469
23(i)	471
26(a)	473
26(b)	477
26(c)	515
26(d)	519
26(e)	522
26(f)	526
27	529
28	531
31	533

General Counsel's Exhibits:—Continued Page

32 534
33 536

Respondent's Exhibits:

11 537
12 542
15 544
16 548
17 550
18 554
19 555
20 557
21 558

Association's Exhibits:

2 559
3 560
4 561
4(a) 562
4(b) 564
4(c) 564a
5 565
5(a) 567
7 568
10 575
11 577

Joint Exhibit:

"Stipulation of Facts, pages 1-11 578

Respondent's brief in support of exceptions to the Administrative Law Judge's Decision 588

The Orders of the Supreme Court granitng petitions for a writ of Certiorari 593, 594, 595

The decision of the Board and the decision and judgment of the court of appeals were printed in the petitions for a writ of certiorari and thus need not be reprinted.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of:

AMERICAN BROADCASTING COMPANIES, INC., CBS INC., AND NATIONAL BROADCASTING COMPANY, INC.

Case Nos.: 31-CB-1203-2
31-CB-1223
31-CB-1316
31-CB-1313
31-CB-1355

3.8.73 Charge filed in Case No. 31-CB-1203-2

4.4.73 Charge filed in Case No. 31-CB-1223

4.18.73 Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated

5.2.73 Union's Answer to Consolidated Complaint, dated

5.14.73 Joint request for continuance of hearing, dated

5.14.73 Teletype rescheduling hearing, dated

5.16.73 Teletype rescheduling hearing, dated

5.18.73 Consolidated amended complaint, dated

5.21.73 Hearing opened

5.22.73 Union's Answer to Consolidated Amended Complaint, dated

7.11.73 Change filed in Case No. 31-CB-1313

7.16-73 Charge filed in Case No. 31-CB-1316

7.25.73 Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated

8.2.73 Joint Motion to reopen record, consolidated cases, and vacate time set for filing of briefs, dated

8.10.73 Order on Motion to reopen record, consolidated cases, and vacate time for filing briefs, dated

8.16.73 Order rescheduling hearing, dated

8.22.73 Union's Answer to Consolidated Complaint, dated

9.5.73 Charge filed in Case No. 31-CB-1355

9.7.73 Union's request to reschedule hearing, dated

9.10.73 Joint Motion by teletype to continue hearing, dated

9.12.73 Teletype rescheduling hearing, dated

9.20.73 Complaint and Notice of Hearing, dated

10.4.73 Union's Answer to Complaint, dated

11.8.73 Joint Motion by teletype to reschedule hearing, dated

11.9.73 Teletype rescheduling hearing, dated

11.9.73 Motion to Consolidate Cases, dated

11.12.73 Teletype rescheduling hearing, dated

11.14.73 Teletype to Show Cause from Administrative Law Judge, returnable on or before November 21, 1973, why the General Counsel's Motion to Consolidate Case 31-CB-1355 with 31-CB-1203-2, 1223, 1313 and 1316 should not be granted, dated

11.26.73 Parties' Stipulation, dated

12.7.73 Teletype postponing hearing, dated

12.11.73 General Counsel's Motion to Amend Complaints, dated

12.11.73 Second Consolidated Amended Complaint, dated

12.13.73 Union's Answer to Second Consolidated Amended Complaint, dated

12.18.73 Parties' Motion to submit stipulation of facts, dated

12.18.73 Parties' stipulation of facts, dated

1.25.74 Administrative Law Judge's Order closing hearing, dated

7.10.74 Administrative Law Judge's letter advising the parties that they have until August 9, 1974, to submit written statement of position, dated

8.9.74 Union's statement of position, dated

9.18.74 Administrative Law Judge's Decision issued

9.18.74 Administrative Law Judge's Order correcting record, dated

11.27.74 Respondent's brief in support of exceptions

11.29.74 Union's exceptions to the Decision of the Administrative Law Judge, received

1.8.75 Cross-Exceptions to the Administrative Law Judge's Decision and Order by the Petitioner, American Broadcasting Companies, Inc., and National Broadcasting Company, Inc., received

1.15.75 Cross-Exceptions of Charging Party Association of Motion Picture and Television Producers, Inc., to the Decision of the Administrative Law Judge, received

5.13.75 Board's Decision and Order, dated

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Division of Judges

Case No. 31-CB-1203-2

WRITERS GUILD OF AMERICA, WEST, INC.

and

ASSOCIATION OF MOTION PICTURE AND
TELEVISION PRODUCERS, INC.

Case No. 31-CB-1223

WRITERS GUILD OF AMERICA, WEST, INC.

and

AMERICAN BROADCASTING COMPANIES, INC.
COLUMBIA BROADCASTING SYSTEM, INC.
NATIONAL BROADCASTING COMPANY, INC.

Case No. 31-CB-1316

WRITERS GUILD OF AMERICA, WEST, INC.

and

ASSOCIATION OF MOTION PICTURE AND
TELEVISION PRODUCERS, INC.

Case No. 31-CB-1313

WRITERS GUILD OF AMERICA, WEST, INC.

and

AMERICAN BROADCASTING COMPANIES, INC.
COLUMBIA BROADCASTING SYSTEM, INC.
NATIONAL BROADCASTING COMPANY, INC.

Case No. 31-CB-1355

WRITERS GUILD OF AMERICA, WEST, INC.

and

QM PRODUCTIONS

SECOND CONSOLIDATED AMENDED COMPLAINT

It having been charged by Association of Motion Picture and Television Producers, Inc., herein called Association, in Cases Nos. 31-CB-1203-2 and 31-CB-1316, and by American Broadcasting Companies, Inc.; Columbia Broadcasting System, Inc.; and National Broadcasting Company, Inc., herein called respectively American, Columbia and National, in Cases Nos. 31-CB-1233 and 31-CB-1313, and by QM Productions, herein called QM, in Case No. 31-CB-1355 that Writers Guild of America, West, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Acting Regional Director pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Second Consolidated Amended Complaint and alleges as follows:

1. (a) The charge in Case No. 31-CB-1203-2 was filed by the Association on March 8, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(b) The charge in Case No. 31-CB-1316 was filed by the Association on July 16, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(c) The charge in Case No. 31-CB-1223 was filed by American, Columbia, and National on April 4, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(d) The charge in Case No. 31-CB-1313 was filed by American, Columbia and National on July 11, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

(e) The charge in Case No. 31-CB-1355 was filed by QM on September 5, 1973, and a copy thereof was served on Respondent on the same date by registered mail.

2. (a) The Association is now, and at all times material herein has been, an incorporated employer association with its principal place of business at Los Angeles, California, which admits to membership firms engaged in the production and distribution of motion picture and television films and which exists in part for the purpose of negotiating, executing and administering multi-employer collective-bargaining agreements on behalf of its employer-members with the collective-bargaining representatives of their employees, including the Respondent.

(b) The employer-members of the Association, annually, in the course and conduct of their business operations, collectively, sell and ship from their studios in California, directly to points outside the State of California, motion picture films and other products valued in excess of $50,000.

(c) American, a New York corporation, with offices in various locations thoughout the United States, including Los Angeles, California, is engaged in the production and broadcasting of television programs.

(d) American, annually, in the course and conduct of its business at its Los Angeles, California location, derives gross revenues in excess of $100,000 from sales made to customers located outside the State of California, and annually purchases goods valued in excess of $50,000 directly from suppliers located outside the State of California.

(e) Columbia, a New York corporation with offices located in various locations throughout the United States, including Los Angeles, California, is engaged in the production and broadcasting of television programs.

(f) Columbia, annually, in the course and conduct of its business at its Los Angeles, California location, derives gross revenues in excess of $100,000 from sales made to customers located outside the State of California, and annually purchases goods valued in excess of $50,000 directly from suppliers located outside the State of California.

(g) National, a Delaware corporation with offices located in various locations throughout the United States, including Burbank, California, is engaged in the production and broadcasting of television programs.

(h) National, annually, in the course and conduct of its business at its Burbank, California location, derives gross revenues in excess of $100,000 from sales made to customers located outside the State of California and annually purchases goods valued in excess of $50,000 directly from suppliers located outside the State of California.

(i) QM is now, and has been at all times material herein, a California corporation, with its principal place of business in Burbank, California, where it is engaged in the production and distribution of motion picture and television films.

(j) Annually, in the course and conduct of its business operations at its Burbank, California location, QM sells television and motion picture films valued in excess of $50,000 directly to customers located outside the State of California.

3. The Association, through its employer-members, American, Columbia and National, and QM, each is now, and at all times material herein each has been, an employer engaged in commerce, and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Association, through its employer-members, American, Columbia and National, and QM, each is now, and at all times material herein each has been, an Employer within the meaning of Section 2(2) and 8(b)(1)(B) of the Act.

5. Respondent is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) and Section 8(b) of the Act.

6. At all times material herein, the following named persons occupied the positions set forth opposite their respective names, and at all times material herein, were agents of Respondent, acting on its behalf, within the meaning of Section 2(13) of the Act:

Ranald MacDougall	—	President
Michael H. Franklin	—	Executive Director
Alan Griffiths	—	Assistant Executive Director
Carey Wilber	—	Co-Chairman of Strike Committee
Patty (last name unknown)	—	Member of Strike Committee
John Furia	—	Television Radio President (Now President of Respondent)
Harlan Ellison	—	Member of Council of Respondent
Brad Radnitz	—	Member of Council of Respondent
John Mendonsa	—	Attorney for Respondent
Emmett Lavery	—	Member of Trial Committee
Irma Kalish	—	Member of Trial Committee
Nate Monaster	—	Member of Trial Committee
Barry Oringer	—	Member of Trial Committee
James Poe	—	Member of Trial Committee
Christopher Knopf	—	Member of Trial Committee
Michael Blankfort	—	Member of Trial Committee
Jack Ellinson	—	Member of Trial Committee
Millard Kaufman	—	Member of Trial Committee

7. Respondent is now, and has been at all times material herein, the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act of the employees in various appropriate units, employed by the Association members at their respective studios, by American, Columbia and National at their respective studios and by QM at its studios.

8. (a) Up to and including March 4, 1973, Respondent and the Association were parties to a written collective-bargaining agreement entitled "Writers Guild of America 1970 Theatrical and Television Film Basic Agreement" dealing with rates of pay, wages, hours of employment and other terms and conditions of employment, of the employees in the appropriate unit described in paragraph 7 above, which agreement by its terms was effective from June 16, 1970 to June 15, 1973, but which was terminated on March 4, 1973, by Respondent, pursuant to the terms of the Agreement.

(b) At all times material herein American, Columbia and National comprised a multi-employer bargaining unit, and up to and including March 4, 1973, were parties with Respondent to a written collective-bargaining agreement, which was entitled "Writers Guild of America Theatrical and Television Film Basic Agreement of 1970—Networks," dealing with rates of pay, wages, hours of employment and other terms and conditions of employment, for the employees in the appropriate unit for each respective employer as described above in paragraph 7, and which agreement was effective from June 16, 1970 to June 15, 1973, but which was terminated by Respondent on March 4, 1973, pursuant to the terms of such Agreement.

(c) At all times material herein, American, Columbia and National comprised a multi-employer bargaining unit, and up to and including February 13, 1973, were parties with Respondent to a written collective-bargaining agreement, which was entitled "1971 Writers Guild of America Television Freelance Minimum Basic Agreement," dealing with rates of pay, wages, hours of employment and other terms and conditions of employment for the employees in the appropriate unit as described above in paragraph 7, and which agreement was effective by its terms from October 1, 1971 to February 13, 1973.

(d) Up to and including March 4, 1973, Respondent and QM were parties to a written collective-bargaining agreement entitled "Writers Guild of America 1970 Theatrical and Television Film Basic Agreement" dealing with rates of pay, wages, hours of employment and other terms and conditions of employment of the employees in the appropriate unit described above in paragraph 7, which agreement was effective from June 16, 1970, to June 15, 1973, but which was terminated on March 4, 1973, by Respondent pursuant to the terms of the agreement.

9. (a) At all times material herein, the Association, through its employer-members, American, Columbia and National, employed, and presently employ, persons in the classifications set forth below, which persons were, and are, also members of Respondent in good standing, and

such persons at all times material herein have been, and are now, supervisors of their respective employers within the meaning of Section 2(11) of the Act, and are representatives or potential and likely representatives for their respective employers for the purposes, among others, of collective bargaining or the adjustment of grievances within the meaning of Section 8(b) (1) (B):

Producer
Director
Executive Producer
Associate Producer
Producer Director
Research Director
Executive Assistant to the Vice President
Vice President for Program Production
Vice President for Production
General Programming Executive
Vice President of Program Development
Manager of Film Programs
Story Editor
Executive Story Editor
Executive Story Consultant

(b) At all times material herein, QM employed Robert Blees in the classification of Executive Story Consultant, said Blees also being a member of Respondent in good standing.

(c) Blees was, at all times material herein, a supervisor of QM within the meaning of Section 2(11) of the Act, and a representative or a potential representative of QM for the purposes, among others, of collective bargaining or the adjustment of grievances within the meaning of Section 8(b) (1) (B) of the Act.

10. (a) Commencing on or about March 4, 1973, and continuing to June 24, 1973, Respondent engaged in a strike against the Association and its member-employers,

and established and maintained a picket line at certain of the premises of struck American member-employers to protest its dispute with the Association and its member-employers concerning contract negotiations with said Association.

(b) Commencing on or about March 29, 1973, and continuing to July 12, 1973, Respondent engaged in a strike against American, Columbia, and National, and established and maintained a picket line at the premises of each said struck employer to protest its dispute with said employer concerning contract negotiations with each said employer for a new agreement to replace the terminated Writers Guild of America Theatrical and Television Film Basic Agreement of 1970—Networks.

(c) Commencing on or about April 12, 1973, and continuing to July 12, 1973, Respondent engaged in a strike against American, Columbia and National and established and maintained a picket line at the premises of each said struck employer to protest its dispute with said employer concerning contract negotiations with each said employer for a new agreement to replace the expired 1971 Writers Guild of America Television Freelance Minimum Basic Agreement.

(d) Commencing on or about March 4, 1973, and continuing to March 17, 1973, Respondent engaged in a strike against QM, and established and maintained a picket line at the premises of QM to protest its dispute with QM concerning contract negotiations with said QM.

11. In late February 1973, the exact date presently unknown, Respondent prepared, published and distributed Rules for the Conduct of Members During a Strike, which rules are attached hereto and designated as Exhibit I and made a part hereof, to all its members, including those members occupying the positions designated in paragraph 9 above.

12. In February 1973, the exact date presently unknown, Respondent held a meeting attended by a number of members occupying the positions designated in paragraph 9 above, at which meeting Respondent, by Michael Franklin, announced that the strike rules applied to all members.

13. (a) Commencing on or about March 13, 1973, Respondent, through its agent Alan Griffiths, by telegram, threatened to discipline various of its members occupying positions described in paragraph 9 above, if they continued to cross the picket line and work for their respective employer in any capacity.

(b) Commencing on or about March 5, 1973, Respondent, through its agents, Carey Wilber, Alan Griffiths, Patty (last name unknown), John Furia, Harlan Ellison, and Brad Radnitz and by others presently unknown, by telephone, threatened numerous members occupying the positions set forth in paragraph 9 above, with fines and other disciplinary action if they continued to cross the picket line to perform work in any capacity for their respective employer.

(c) Commencing on or about April 6, 1973, Respondent issued Notices of Disciplinary Hearings and Charges against numerous persons occupying the positions set forth in paragraph 9 above, charging them with violating certain of the rules set forth in the Rules for the Conduct of Members During a Strike as set forth in paragraph 11 above, and ordering said persons to appear before a disciplinary board of Respondent on the date set forth in said Notice of Disciplinary Hearing and Charges.

(d) Commencing in late February 1973, the exact date presently unknown, Respondent, through promulgation of its strike rules, as alleged in paragraph 11 above, and specifically Rule 30 thereof, and by other actions including press releases published by *Daily Variety* and other publications, and by direct personal communications by telephone as alleged in paragraph 13(b) above, threatened numerous persons occupying the positions set forth in paragraph 9 above, that for all times in the future no member of Respondent would work with or perform services for them if they failed to honor or otherwise support the strike described in paragraph 10 above.

(e) Commencing on or about May 21, 1973, and continuing thereafter to date, Respondent, pursuant to the Notices of Disciplinary Hearings and Charges alleged in paragraph 13(c) above, commenced or initiated intra-

union trials, on the charges filed against numerous persons occupying the positions set forth in paragraph 9 above.

(f) Commencing on or about June 25, 1973, and continuing thereafter to date, Respondent, in the circumstances described above in subsections 13(c) and (e), fined the persons named below, and others, who occupy the positions set forth in paragraph 9 above the amount set forth opposite their respective names and expelled them from membership in the Respondent because said persons crossed Respondent's picket lines to perform their supervisorial and managerial functions in violation of Respondent's strike rules described above in paragraph 11:

David Victor	—	$50,000 plus costs
Jon Epstein	—	$2,000 plus costs
Herman Saunders	—	$100 plus costs
John Mantley	—	$50,000 plus costs
Robert Blees	—	$25,000 plus costs
Barry Crane	—	$10,000 plus costs

(g) Commencing on or about June 25, 1973, and continuing thereafter to date, Respondent, in the circumstances described above in paragraph 13(c) and (e) fined the persons named below, and others, who occupy the positions set forth in paragraph 9 above the amount set forth opposite their respective names, and suspended them from membership in the Respondent for the period set forth opposite the amount of their fine because said persons crossed Respondent's picket lines to perform their supervisorial and managerial functions in violation of Respondent's rules described above in paragraph 11.

David Levinson	$10,000 plus costs	—2 years
Robert Cinader	$5,000 plus costs	—3 years
Hugh Benson	$100 plus costs	—2 years

14. By the acts and conduct described above in paragraphs 11, 12 and 13, and by each of said acts and conduct, in the circumstances described above in paragraphs 9 and 10, Respondent did restrain and coerce, and is now restraining and coercing the Association and its member-

employers, American, Columbia and National, and QM in the selection and retention of their representatives for the purposes of collective bargaining or the adjustment of grievances, and Respondent did thereby engage in, and is now engaging in, unfair labor practices within the meaning of Section 8(b) (1) (B) of the Act.

15. The acts and conduct of Respondent described above in paragraphs 11 through 14, occurring in connection with the operations of the Association and its member-employers, American, Columbia and National, and QM, described in paragraphs 2 through 4 above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts and conduct of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(b) (1) (B) and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Second Consolidated Amended Complaint to be signed and issued this date.

/s/ Abraham Siegel
ABRAHAM SIEGEL
Regional Director
National Labor Relations Board
Region 31
12th Floor, Federal Building
11000 Wilshire Boulevard
Los Angeles, California 90024

Dated at Los Angeles, California,
this 11th day of December 1973.

EXHIBIT I

WRITERS GUILD OF AMERICA, WEST, INC.

February 20, 1973

RULES FOR THE CONDUCT OF MEMBERS DURING A STRIKE

1. Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.

2. Writing for any struck producer as designated in a restraining order is prohibited. The term producer includes any employer or potential employer, whether studio, individual, production company network or any representative or subsidiary or associate thereof.

3. Writing for a struck producer is prohibited even through the member be employed by or under assignment to the said producer at the time the strike is called, regardless of the capacity in which the member is employed.

4. Writing for a struck producer will cease immediately upon the calling of the strike, regardless of the extent of the work already completed for said producer as the result of employment commenced prior to the date of the strike.

5. The prohibition against writing for a struck producer obtains regardless of the place at which writing might be done, i.e., whether on or off the premises of the producer.

6. No delivery of literary material shall be made to a struck producer regardless of when it was written, solicited, contracted or paid for.

7. The submission of literary material to a struck producer is prohibited even though neither negotiation for nor consummation of a sale is contemplated until after settlement of the strike.

8. Members shall file with the Guild copies of all literary material completed for and delivered to a struck producer as of the calling of the strike in order that they may be on record with evidence to substantiate their timely work stoppage in the event this matter comes into issue.

9. Immediately upon the calling of a strike members are to inform their agents or any other representatives of all the Guild's strike rules and revoke or suspend as to a struck producer any authorization for representation, either for the sale of material or for services for the duration of the strike.

10. Immediately upon the calling of a strike each member must serve written notice upon each struck producer who may at that time have in his possession any literary material owned by the member. A copy of such notice is to be sent to the Guild. Notice shall be in the following form:

> "I hereby demand that you promptly return to me the following named literary material currently in your possession and owned by me:
>
> (Title of Material)
> _____
>
> (Signature)"
> _____

11. Members are prohibited from engaging in any conference, negotiations, discussions or meeting of any kind, whether in person, by telephone or through the mail, or through an agent or other representative, with any struck producer, his employees, associates, subsidiaries and/or representatives regarding the sale of any literary material or any contract for writing services even though the effective date of such proposed agreement be scheduled for a time after the settlement of the strike.

12. All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.

13. Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to vist the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

14. Members may not accept from a struck producer for reading, perusal, study or any other purpose any sample script, format, presentation or literary material of any nature which might have any actual or potential connection with future employment of said members as writers or otherwise even though such services are to begin after the conclusion of the strike.

15. The use of a fictitious name of any kind as a means of circumventing strike rules and regulations is prohibited whether or not it be registered with the Guild.

16. The commencement of an assignment for a struck producer or the sale of literary material to a struck

producer so soon after the settlement of a strike as fairly to give rise to the inference that negotiations for the same have been conducted during the course of the strike shall be cause for investigation and is disciplinable, if evidence supports such inference.

17. The acts of any agent or other representative acting on behalf of a member will be imputed to the member in the absence of satisfactory evidence to the contrary.

18. Any agreement entered into by a member prior to the commencement of a strike but in anticipation thereof for the sale or delivery of literary material not then written but to be delivered after the settlement to the strike is forbidden.

19. A member may not, during the course of a strike, conduct negotiations with a struck producer for financing the production of any of his literary material or scripts, or for his participation in such production in any capacity.

20. Every member has the duty of reporting to the Guild the name of any agent or producer or person or entity affiliated with the production, administration or management of a struck producer or company who, in disregard of an existing strike, solicits material from, or the employment of such member or any other member, or otherwise seeks to entice a member into violating the strike rules or regulations.

21. No member, his good intentions granted, may negotiate or seek to negotiate with any struck producer the settlement of a strike or any phase thereof.

22. A member is chargeable with knowledge of all strike rules and regulations, of any strike information or developments circularized through the mail to the membership and of any strike information made known to the entertainment industry through any recognized medium of communication such as trade papers, newspapers, radio broadcasts or telecasts, etc., unless he offers satisfactory evidence that it

was impossible for him to receive such strike information.

23. Writers who are not members of the Guild, but who are reasonably chargeable with knowledge that the Guild is on strike or anticipates striking certain producers, who nevertheless write for or sell literary material to struck producers, or who in any way act to defeat the best interests of the Guild during a strike, will be excluded from membership in the organization.

24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts solely to writing.

25. A member may not, during a strike, attempt to solicit or negotiate in behalf of a struck producer for the services of a writer, whether a member or not, or for the purchase of literary material, whether or not written by a member.

26. The term "member" encompasses anyone admitted to the membership rolls of the Writers Guild of America, both West and East, and classified as either active or inactive, associate, withdrawn or suspended, whether in good standing or bad.

27. No member may be relieved of the responsibility for the payment of any fine, or from any disciplinary action resulting from any infraction of strike rules by offering his resignation from the Guild. Membership in any guild or union is not a voluntary association of parties but a binding contract between them which cannot be abrogated unilaterally by either party except under provisions of the Guild constitution or state or federal law. It should be noted that fines levied for infringement of strike rules are collectable in a suit at law.

28. The Guild shall have authority to assign and direct members in the performance of duties relating to

the strike including, but not limited to, picket duty. Any member found guilty of refusal to perform picket duty shall be fined not less than $100 per day for each day of such refusal to perform.

29. The following is excerpted from Article X, Paragraph A of the Guild Constitution and By Laws.

"Any member of the Guild who shall be found guilty, after a hearing conducted in accordance with the procedures herein prescribed, of any act or failure to act, or any conduct which is prejudicial to the welfare of the Guild, or any of its Branches . . . . or of failing to observe the Constitution and By-Laws of this Guild or any lawful order of the Council or of a Branch Board . . . may be suspended, declared not in good standing, expelled from membership in the Guild, be asked to resign or in lieu thereof, or in addition thereto, he may be censured, fined or otherwise disciplined."

30. No member shall work with any individual, including a writer-executive who has been suspended from Guild membership by reason of his violation of strike rules, or who has been found by the Council to have violated strike rules, in the event no disciplinary action was instituted against such person.

31. Enforcement of these rules may be delegated to such committee or committees as the Council may designate.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 31

[Received Dec. 21, 1973]

Case No. 31-CB-1203-2

WRITERS GUILD OF AMERICA, WEST, INC.,

and

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.

Case No. 31-CB-1223

WRITERS GUILD OF AMERICA, WEST, INC.,

and

AMERICAN BROADCASTING COMPANIES, INC.;
COLUMBIA BROADCASTING SYSTEM, INC.;
NATIONAL BROADCASTING COMPANY, INC.

ANSWER TO SECOND CONSOLIDATED AMENDED COMPLAINT

Respondent answers the Second Consolidated Amended Complaint as follows:

1. Admits the allegations set forth in numbered paragraphs and sub-paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 13(a), (b), (c) and (e).

2. Denies, generally and specifically, the allegations set forth in numbered paragraphs 13(d), 14, 15 and 16.

3. Answering paragraphs 9(a):

Admits that at all times material herein, the Association, through its employer-members, and American, Columbia and National, employed, and presently employ, persons in the classifications set forth in the paragraph;

Lacks knowledge as to whether all of such persons were and are members of Respondent in good standing but has supplied this information upon request at the

hearing with respect to each such person identified by the General Counsel.

Denies, generally and specifically, that these persons are supervisors of their respective employers within Section 2(11) of the Act;

Denies, generally and specifically, that such persons are representatives or potential or likely representatives for their respective employers for the purpose of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act.

4. Admits the allegations set forth in paragraphs 10 (a), (b), (c), and (d), with the qualification that picket lines were established on March 4, 1973 and the further qualification that some, but not all, of the member-employers of the Association have been picketed at various times since March 4, 1973.

5. Answering sub-paragraphs 13(f) and (g):

Admits the allegations set forth in each of these sub-paragraphs with the following qualifications:

(a) By subsequent actions of the membership and Board of Directors of the Respondent the suspensions and expulsions of the named individuals were and are vacated and the fines set forth in these sub-paragraphs were substantially reduced in amount.

(b) The named individuals were subjected to disciplinary proceedings because they crossed Respondents picket lines without regard to the type of services or functions which said individuals claimed that they intended to perform for Respondents during the strike.

(c) Pursuant to constitutional powers vested in the Board of Directors of Respondent, said Board has stayed the collection of the reduced fines of each of the named individuals set forth in these sub-paragraphs and has offered to stay the processing of all other intra-union charges pending against all other members who occupy positions set forth in paragraph 9 of the Second Consolidated Amended Complaint. Such stay, by its terms, if accepted by the affected members, will remain in effect until a final decision is rendered by the Courts on the unfair labor practice charges which initiated the present unfair labor practice proceedings.

FIRST SEPARATE SPECIAL DEFENSE

By the terms and provisions of their respective collective bargaining agreements (described in paragraphs 8(a), (b) and (c) of the Second Consolidated Amended Complaint) the Employer charging parties have, through bona fide collective bargaining with the Guild, legally waived and given up any legal right they may have had or now claim to have to designate any of the members of the Guild as their representatives for the purpose of collective bargaining or the adjustment of grievances during the current strike.

SECOND SEPARATE SPECIAL DEFENSE

By the terms and provisions of their respective collective bargaining agreements, referred to above, the Employer charging parties have expressly agreed that members of the Guild, including members who may at the time of or during a strike be assigned supervisory duties, may respect the Guild's strike call, refuse to cross picket lines or perform any service during a strike and be subject to Guild discipline for crossing picket lines or working for struck employers during any strike such as the current one described in the Second Consolidated Amended Complaint.

THIRD SEPARATE SPECIAL DEFENSE

In accordance with grievance and arbitration provisions of it's collective bargaining agreements, on April 28, 1973 Respondent mailed written grievances and requests for arbitration to the Employer charging parties requesting a prompt arbitration of the legal and factual issues set forth in the First and Second Separate Special Defenses, set forth above. More particularly, the issues which the Guild seeks to arbitrate with the Association are stated as follows:

> "1. Whether by virtue of the provisions of said Agreement, and particularly Article 7, all contracts of members of the Guild with employer companies

as to whom the Guild is on strike have been suspended, including the contracts of all members no matter in what capacities they have been employed; and

2. Whether by virtue of the provisions of said Agreement, and particularly Article 7, the definition of writer, and other provisions, the Association and the Companies have waived the right to designate or select members of the Guild as representatives of employers for the purposes of collective bargaining or the adjustment of grievances and the right to complain of discipline threatened or imposed by the Guild on any of its members."

The issues which the Guild seeks to arbitrate with American, Columbia and National are identical except the contract section references differ as to the agreement referred to in paragraph 8(c) of the Second Consolidated Amended Complaint.

In view of the pendency of the above described arbitration proceedings, Respondent respectfully requests that the issues raised in the Second Consolidated Amended Complaint be deferred to arbitration and the Board retain jurisdiction pending the arbitral decision thereof.

Dated: Los Angeles, California
December 13, 1973

Respectfully submitted,

LEVY, VAN BOURG & HACKLER, ESQS.

By: /s/ Charles K. Hackler
CHARLES K. HACKLER

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 3550 Wilshire Boulevard, Los Angeles, California. On December 19, 1973 I served the within Answer to Second Consolidated Amended Complaint on the following parties to this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mails at 3550 Wilshire Blvd., Los Angeles, Ca. addressed as follows:

Honorable Sidney Barban
Administrative Law Judge
National Labor Relations Board
Division of Judges
1231 - 25th Street, N.W.
Washington, D.C. 20037

Harry J. Keaton, Esq.
Counsel for Charging Party
Mitchell, Silberberg & Knupp, Esqs.
1800 Century Park East
Los Angeles, California 90067

Larry A. Curtis, Esq.
Counsel for Charging Party
Musick, Peeler & Garrett, Esqs.
One Wilshire Blvd.
Los Angeles, Ca. 90017

Phillip R. LeVine, Esq.
Counsel for the General Counsel
National Labor Relations Board
Region 31
11000 Wilshire Blvd.
Los Angeles, California 90024

Richard N. Fisher, Esq.
Counsel for Charging Parties
O'Melveny & Myers, Esqs.
611 West Sixth Street
Los Angeles, California 90017

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on December 19, 1973 at Los Angeles, California.

/s/ Ellen Miller
ELLEN MILLER

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Thirty-First Region

Case No. 31-CB-1203-2

In the Matter of:

WRITERS GUILD OF AMERICA WEST, INC., RESPONDENT

and

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC., CHARGING PARTY

Case No. 31-CB-1223

WRITERS GUILD OF AMERICA WEST, INC., RESPONDENT

and

AMERICAN BROADCASTING COMPANIES, INC.:
COLUMBIA BROADCASTING SYSTEM, INC.:
NATIONAL BROADCASTING COMPANY, INC.,
CHARGING PARTY

12th Floor, Federal Building
11000 Wilshire Boulevard
Los Angeles, California
Monday, May 21, 1973

The above-entitled matter came on for hearing, pursuant to Notice, at 10:00 o'clock a.m.

BEFORE:

HONORABLE SIDNEY J. BARBAN, Administrative Law Judge

[2] APPEARANCES:

PHILLIP R. LE VINE, ESQ.
11000 Wilshire Blvd., Los Angeles, Calif. 90024, appearing on behalf of the General Counsel.

CHARLES K. HACKLER and
GERALD GOLDMAN, ESQS.
Levy, VanBourg & Hackler, 3550 Wilshire Blvd., Los Angeles, Calif. 90010, appearing on behalf of the Respondent.

HARRY J. KEATON, ESQ.
Mitchell, Silberberg & Knupp, 1800 Century Park East, Los Angeles, Calif. 90067, appearing on behalf of the Charging Party, Association of Motion Picture and Television Producers, Inc.

DAVID G. MILLER, ESQ.
Loeb and Loeb, One Wilshire Building, Suite 1600, Wilshire, Blvd. at Grand Avenue, Los Angeles, Calif. 90017, appearing on behalf of the Charging Party, Association of Motion Picture and Television Producers, Inc.

RICHARD N. FISHER, ESQ.
O'Melveny & Myers, 611 W. Sixth Street, Los Angeles, Calif. 90017, appearing on behalf of the Charging Party, American Broadcasting Companies, Inc.; Columbia Broadcasting System, Inc.; National Broadcasting Company, Inc.

• • • •

[51] SHELDON M. MITTLEMAN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you state your name for the record, please?
A Sheldon M. Mittleman.

Q And your address, please?
A 4123 Terry Brae, Tarzana, California.
Q All right.
Where are you employed?
A I am employed at Universal City by Universal City Studios, Inc., and MCA, Inc.; it is a parent corporation.

• • • •

[55] Q All right.
Could I ask you to go into a little bit more detail with respect to the sequence of how his duties—how the duties as a producer originate, and how it progresses through the development of the film?
A Well, first of all, an idea or concept has to be established.
In the case of a television series, it will be a series concept, and in the case of a theatrical motion picture, it will be an idea for a picture, or in the case of a television anthological picture, it will be an idea for a picture.
This can come from a number of different sources, a published novel or a published source.
Or it can be an idea which could be anywhere from a one-page idea to a complete script prepared and submitted by a writer to the studio.
But whatever the concept is, once a studio management determines that it is of sufficient interest to develop it, it is then assigned to a producer to develop.

• • • •

[56] The first step will normally and customarily be the preparation of a story or a treatment, indicating the full story, but usually not including dialogue.
This will be written by the writer under the supervision of a producer who may suggest changes, may suggest changes in direction, or approaches of the story.
When this story is completed, the producer along with other members of management, will then determine if the project is still a viable project, one that is interesting to that particular company to produce.
And then the next step will be triggered if that election to go forward is made.

And that step would be the writing of the full script, which would include the dialogue, the flushing out of the characters so that they are real people, rather than sketches.

It might include descriptions of the locale, etcetera.

• • • •

[58] And the producer in conjunction with the production department, which arranges for the physical production, will then proceed to prepare for the actual principal photography of a picture.

A number of areas are involved; the type of set to be used will the picture be produced on location? And who will be the subsidiary actors, what will be the additional staffing of the crews, the assistant directors?

And more important, who are the craft union employees who will be involved with the picture?

These are all selected at this point basically by the producer function, as you call it—the executive producer, the producer and the associate producer subject to the final approval or veto by management.

• • • •

[59] This includes the determination and selection of the composer and the approval of the music of that composer, and the determination of how large an orchestra will be used for the recording of the music, the determination of additional scenes—once the picture is put together, whether additional scenes are required, and whether it will require additional shooting.

• • • •

[60] Q All right.

When would an executive producer be involved in the production of the television film?

MR. GOLDMAN: I'm sorry. I couldn't hear that question.

JUDGE: Would you please read the question?

(Question read.)

THE WITNESS: If an executive producer is involved in a particular project, he will usually be involved at the very beginning.

His responsibility is to supervise from a management or executive level everything that is involved in connection with the production of a picture.

For example, he may not physically be on the set during production.

He will receive reports as to the progress of it. To put it in a slightly different context, he is sort of a staff rather than a line executive.

Q When would an associate producer be involved in the production of a film?

A Well, an associate producer would normally be involved in the later stages, usually, but not always.

He would not be involved in the initial creative process of the preparation of the script. That is usually the function more often of the producer and executive producer.

The associate producer is usually primarily involved in [61] the physical production of the picture and in the post-production areas; although this is not always the case.

There are many associate producers who do contribute in the preliminary creative writing stages also.

• • • •

Q (By Mr. LeVine) All right.

What function does a producer have in relation to dealing with employees?

A Well, I previously indicated what the physical problems are of the producer; that is, in terms of physical things, scripts, physical production.

And equally important area of responsibility of the producer is in relationship and dealings with the various personnel employed for or assigned to the production of the picture.

It is very common in the motion picture industry where [62] creative people are constantly meeting and working together to create a finished product that there will be differences in approach, differences in concept, differences in even the conception of the assignment or the responsibility or what they feel their responsibility is on a particular picture.

When there are these differences between the various people, it is the responsibility and function of the producer to resolve these differences, to make a determination as to whom among competing parties has the responsibility for a particular aspect of it.

Many times the disagreements may be jurisdictional in terms of the various labor organization jurisdictions, and other times the disagreement will be as a matter of creative approach.

Still other times it may be that something is simple and mundane as personality conflicts between people who must work together.

It is the function of the producer to iron out these problems, and to make the necessary accommodations so that all people assigned to the particular project can function in a way that management requires; that is, to produce and complete the finished motion picture as economically as possible.

Q. All right.

Could you tell me what the duties of a director would [63] be?

A Yes. The director is a person who assumes the primary responsibility for the principal photography phase of a motion picture.

• • • •

[67] Q (By Mr. LeVine) Is there a story editor function at Universal?

A person who would exercise—

A Many television series produced by Universal employ story editors. They are called by various names—story editor, story consultant, executive story consultant—but the function is generally the same—

Q Could you tell me what that function would be?

A Yes.

That is a person who generally is a professional writer who was involved in working with the producer and the writer of a particular script; in fact, the story editor would usually be assigned to the series and work on all of the scripts of the series.

And let me elaborate what I mean by "work on."

I mean he will meet with the writers—the individual writers who will be contemplated for hiring for the writing of the scripts, and will discuss with them their story ideas.

He will make recommendations to the producer and to management that a particular writer's idea is an idea that is desirable for that program, and that writer should be hired for that particular script.

If his recommendation is followed, and the writer is hired, then the story editor will then work with the writer, [68] make suggestion to the writer in the preparation of the script.

And when the script is delivered—and again if you recall, I stated that it is usually delivered in two steps: the story first and then the final teleplay—but at either of these steps, he may feel that the story is not just going to work out or be suitable for the particular project.

And if he so feels he will recommend to management that the employment of the particular writer be terminated at that step, and either another writer be brought in to complete the project, or that the particular script should be abandoned.

If the script is fully completed, he may also be involved—quite frequently is—in additional writing on the script.

He is as I say usually a writer, but he works on the particular series. And unlike most of the writers who write an individual script for the series, he is deemed by management to have an overall flavor of the series.

And from his point of view, it is not merely sufficient to have an excellent story and teleplay, or script; it is essential that the script conform to the basic concept of the series; that the continuing characters be consistent to the concept of the series.

And that is one of the functions that he is charged [69] with because he is a regular employee on that series as opposed to a casual one-time employment situation.

Q All right.

Does he have a function in dealing with employees who would work under him?

A The only employees generally that he would deal with—and when you say "working under him" I am not sure that is completely accurate—

Q Would he have authority over various people under him?

A He would work with and—this will vary—and I hesitate to say "direct" in order—but he would work with the writers who are writing the particular script.

And as a representative of management, he will instruct them that the story line should be developed in a certain particular way, or that certain dialogue is inappropriate for the characterization of a regular character, and would expect of course that the writer of the individual script would then carry out the suggestions.

It will vary from suggestion to instructions, from case to case.

Q Do problems arise in the story editor dealing with the various writers?

A Yes, quite frequently.

Q What types of problems would arise, to your knowledge?

A Well, the problems may be that the script that is being [70] written by the writer does not conform to the management concept of what is required for the particular series.

One of the functions of the story editor is to ensure that the writer writes in conformance with the series concept; this is not always possible.

There are many outstanding writers who don't have a particular flare for a particular series.

And as outstanding as they may be in other areas, they just can't write for it; this is one problem that comes up.

And the story editor in this case may have to give this kind of direction or instruction or explanation, or whatever, to the writer to make sure that the script comes up in this form.

There may be creative disagreements. The writer may feel that one way to approach a story is creatively valid and the story editor may disagree.

And the disagreement cannot be resolved between the two—more often than not, I believe it is—but it might then go up to the next step of management who will again make the determination as to whose approach is more appropriate.

I would think, and I believe, that more often than not, it is the story editor's approach that is finally selected as the approach to go because he is the one in constant contact with his superiors, and is familiar with the requirements for the particular series.

• • • •

[72] Q All right.

Now, do story editors participate with the producer or director and/or the director function in planning with respect to the production of the film?

A Yes. The story editor is considered as part of management, and his function—part of his function is to assure that the scripts that are produced are not merely creatively acceptable, but are economically acceptable.

He may have certain limitations within the concept and format of the series as to what kind of locations can or cannot be used.

The number of actors, for example, may be important for budgetary reasons.

He is involved in this determination, and at the same time must convey this decision to the writer of the particular script and to control the direction of the particular script so that that script will conform to the management decision.

• • • •

[74] Now, how do these contracts set out the way that these individuals will be paid?

A Well, as a result of the 1970 Writers Guild of America Minimum Basic Agreement, there is a requirement that all contracts entered into from that effective

date, must have compensation for writing services separately stated; and all contracts entered into on that date must conform to the collective bargaining agreement.

• • • •

[82] It is the producer's function—the executive producer, the producer, the associate producer, and story editor—along with other management that is in constant dealings with the network, that if they have a particular project, or a script that they want to produce they will attempt to convince the network which is the ultimate licensee—in fact, the ultimate buyer of the particular project—to proceed.

Since the network will have the veto power quite frequently, and just not approve a project and therefore, not license it, the key function of the producer is to convince the network to accept the project that he wants to produce.

Q All right.

Now, once it is determined that a project is economically feasible, or prior to that determination, is there a budget prepared for the individual project or series?

A Yes. In connection with the television series, there is usually a pre-existing—what is known as a "pattern [83] budget," which is a standard sample budget that will be followed for each and every picture of a series.

With anthological pictures there is also a pattern budget, depending upon the project.

And the particular picture—

MR. HACKLER: I am sorry. I didn't get that word. As to what type of picture?

THE WITNESS: Anthological pictures; that is pictures not with a continuing format or character.

There usually will be a pattern budget. When the script is prepared, the production department will then analyze that script to determine if it can be produced within the budget that pre-exists.

At this point, there may be considerations as to the casting of major performers and the director and so on. And these costs which can vary, are also taken into consideration.

The decision as to whether or not to produce the picture, is then made to a great extent, depending upon whether or not it is within the budget.

But on occasion, the producer along with management, may elect to produce a picture even though it is in excess of the pre-planned budget.

Q. Does the producer participate in that decision?

A Absolutely. He participates first of all in the [84] analysis of the project to determine if it can be produced for the budget.

He is one of the experts who is charged with the knowledge of the cost of production, which is one of his prime functions.

And he also participates in the final decision as to whether or not to produce it after the actual budget based upon the script and the other factors, have been determined.

• • • •

Q All right.

Now, the production of either a television episode or a motion picture, or any project, in that, is there [85] usually a shooting schedule—a time within which it is contemplated that production will be completed?

A Yes. The production department and the producer work out what is known as a shooting schedule, where the script is divided or broken down scene by scene, and the order of shooting, the principal photography—is set out scene by scene and day by day.

So that ahead of time unless there are unforseen events which occur, the producer will know how long the picture will take to be produced—physically produced.

And he will also be in a position to determine if the picture is budgeted at to excessive a price, which scene should be cut, where actors need not be employed, where crews can be switched around, where stages can be utilized as existing stages rather than new stages built.

Q And who makes those decisions?

A Basically, the producer makes those decisions.

Q All right.

• • • •

[88] If it is one that has substantial ramifications either creatively or financially, the executive producer will be called in for a final decision.

• • • •

[89] Q Well, let's say during the production of a television series, a supporting actor wants some time off, or an actor, and—wants half a day off?

A Well, normally that person would go either to the director or producer or both, and they would then determine whether or not that person could be spared, or whether or not that person's services were required.

Or whether or not production could be rescheduled.

And the actor would then be advised "Yes, you may take the time off," or "No, you can't because we will need you and it is essential. Can you not change your other plans to a different time?"

• • • •

[90] THE WITNESS: It contains the additional names—the additional three names that I was asked about: Stephen Heilpern, Leonard Kaufman and Frank Pierson.

MR. MILLER: We are trying to pinpoint the time that they were functioning in these capacities, your Honor.

THE WITNESS: Generally, that is correct. In one case, Frank Pierson—you said as of February 1?

Q (By Mr. Miller) As of February 1, 1973.

A I believe at that point, Frank Pierson was doing a rewrite on a theatrical picture.

As of approximately the 20th of February or thereafter, [91] he was functioning as the producer of that picture in connection with pre-production activities.

• • • •

[108] I think I understand. In other words, coming from the bargaining table, you or Mr. Sheinberg, or whomever happened to be attending, would discuss with him what impact certain things might have on—

A I discussed it with Mr. Sheinberg and Mr. Price; Mr. Sheinberg did not attend any of the meetings.

Q I see.

But you were talking to him in his capacity as you described before, of the impact of possible changes in the agreement?

A Right. Upon management.

Q All right.

Now, while we are on him, he is a senior vice-president of Universal TV.

Is that—that is the title given to him here?

A I believe that is his title, yes.

Q And I gather from your testimony, that he is an executive capacity, rather than a staff or line capacity?

A That is right.

Q And others report to him, but he is not primarily out producing a motion picture?

A That is correct.

[161] JUDGE: And what would the story editor do with respect to the script that was submitted to him by the script writer?

THE WITNESS: He is in conjunction with the producer, or the associate producer, or the executive producer, or all three of those, would decide whether or not they wish to employ the writer to do a complete script based upon the writer's idea or work.

If the decision were made to employ the writer, he would then supervise the writer, work with the writer, give the writer direction, and make sure that the writer is writing for the mood and the particular series of particular concept that is required.

In fact, he would really be the closest supervisor of the free lance writer's work.

The free lance writer would do the actual writing at this point. And the story editor and the script supervisor would discuss the writing with him and make sure that the writing is progressing because there are time problems involved.

The scripts have to be delivered within a certain period of time in order for production to take place. And they would instruct the writer as to any revisions that might be required.

• • • •

[164] REDIRECT EXAMINATION

Q (By Mr. LeVine) Where did you acquire your knowledge as to the functions of the various supervisory-type employees that you discussed on direct?

A In general the 14 years in the motion picture and television industry.

I have been involved as I testified before, in collective bargaining negotiations since 1966 on a regular basis.

At Screen Gems I was, as I also testified, studio counsel. And as such sat in on all the regular executive meetings which were held weekly, at which were present the head of the Business Affairs Department, the head of the Production Department and of the Casting Department, the head of the Post-Production Department, and the Studio Counsel.

And the studio problems—the production problems—of the past week were discussed and the potential problems in the future were discussed.

At Universal I have been involved in the collective bargaining and Guild Agreement area quite extensively.

And whenever any problems arise in this area, I am contacted either by the Labor Relations Department, whose expertise is primarily in the Craft Union and not in the so-called Talent Union agreements, which are the Directors Guild, the [165] Producers Guild and Screen Actors Guild agreements, and whenever there are any problems on particular programs, the producer or the executive producer, or the executive in charge, or occasionally the story editor or the associate producer, will contact me directly and ak me for advice.

Q All right.

From your personal knowledge, can you give an example of a producer handling a grievance involving a writer?

A Yes. A situation came up last year with a producer on this list, as a matter of fact: Paul Mason, who was producer of the series "MacMillan and Wife".

A dispute arose as to whether or not a writing commitment has been made to a free lance writer.

That dispute was taken to the producer, Paul Mason; it was not resolved at that level. The writer in making the claim and the producer had exactly contrary views as to whether or not a legal commitment had been made.

It was referred to me, and eventually wound up in the conciliation procedures of the Writers Guild; because Mr. Mason and I were unable to resolve it to the satisfaction of the individual writer and the Writers Guild.

Q Was Mr. Mason at that time on loan out?

A He was.

Q To Barsu; is that the name of the company?

A Yes.

[165] Q All right.

And did the producer make the initial decision in that situation?

A Yes. The producer made the initial determination on behalf of the company that a writing commitment had not been made, and conveyed that decision to the writer and his agent.

And that then triggered the Guild conciliation procedures on the basis of the rejection of the claim by the producer.

* * * *

[167] Q (By Mr. LeVine) All right.

Now, can you tell me, Mr. Mittleman, whether producers who are on distant locations from Universal, participate in the negotiations with labor organizations at the site of the production?

MR. GOLDMAN: I object.

I don't know what the definition of "distant locations" is. I think it is unintelligible. I think it is improper redirect.

JUDGE: Please read the question.

(Question read.)

MR. Keaton: Your Honor, if I may, Mr. Hackler opened that very line of questioning when he asked this gentleman whether producers and directors participate in labor negotiations.

He went into this for quite a while.

JUDGE: Gentlemen, I had the reporter read back the [168] question.

The objection to it is overruled.

I will take the answer.

THE WITNESS: Where a production occurs involving the use of labor represented by a labor organization with whom the particular studio does not then have a collective bargaining agreement and where therefore, an accommodation with the local union is required for that particular project it is quite common for the producer or associate producer to negotiate an interim short-term agreement—or it could be long-term, but usually short-term—for the particular production.

Q And how would that arise? What type of situation would that be?

A If the picture were shooting on location and there might be a local Teamsters' Union involved or a local Laborers' Union.

The conditions of employment—the minimum salaries, the minimum hours, seniority, layoff rights, grievance procedures—anything of this nature.

• • • •

[177] Q All right.

So we are clear on what you are talking about, the complaint that was made was by the free lance writer, that Paul Mason had made a written or oral commitment to employ, and he hadn't been paid?

A No. The complaint was that Universal City Studios, Inc., had made a commitment to him.

Q Through Mason? He was complaining that Mason —against Mason.

And Mason said "I didn't make the commitment." Is that correct?

A That is correct, as I recall it, yes.

Q So Mason's participation in that grievance, which was a grievance of a guy contending that he has been engaged as a free-lance writer, was to say, "I didn't engage you," and he was supported by management and it went to the Guild and the grievance procedures?

A That is correct.

• • • •

[196] MR. LE VINE: As our next witness, we will call Bernard Barron.

Whereupon,

BERNARD BARRON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[198] Q All right.

And what are the duties of an executive producer—or, the producing function at Twentieth Century?

A The producer is the chief executive in relation to a film project.

It is his store, so to speak, and he runs the show in relation to a specific film project, whether it be a feature film or a television series.

Q All right.

And could you go into some detail as to the specific duties that a—of the producer function?

[199] A Okay.

I can break it down probably into about five principal categories.

The initial conception is category one; the planning is the second phase; and execution for the third phase.

And then there is completion, and finally exploitation.

In other words, from the beginning of the concept of the film or television series, through all these steps necessary to plan it, and then all through all the steps involved in the physical production of the film.

And finally into the finishing portion of the film which we call traditionally in our industry, the post-production phase.

And finally through the distribution and exploitation of that project; the producer has the supervisory and an overriding responsibility for that entire project.

Q All right.

Could you tell us, starting with the initiation of the idea, how he functions and what his duty is, and responsibilities are?

A Well, it varies, of course. If you are talking about a theatrical motion picture as opposed to a television series, one way or another, the initial idea or the original idea surfaces; whether the producer thinks of this idea himself, or in a sense creates it, or whether he hires someone to create [200] it under his supervision, or whether he purchases an existing idea, or an existing concept.

The producer, in a sense, acquires it. And he begins to involve himself in the negotiations, financial and otherwise, to bring it into a viable state of life.

Once there is a deal set with a production company, such as ours, the producer then has the responsibility of fully developing that idea to the point where it can be approved as a going project.

That involves perhaps hiring a writer or supervising the services of writers, or perhaps providing those services on his own to create a script, which is similar perhaps to a blueprint in construction.

• • • •

[201] And once it is approved, again it is the producer's responsibility to begin to set the gain plan into motion; that is, to hire in the necessary people to make this come to life.

• • • •

[202] It is his responsibility to select the composer, the conductor, and to make those creative determinations as to the style of the music involved, as to the amount of music and where it is necessarily going to be in the film, the editorial style of the film; to provide for the personnel necessary to complete the picture.

And if it is a motion picture, the producer then finally has a responsibility as to the exploitation and sale of that picture; to make provisions for all of the things that he has to do in terms of contributing to the successful exploitation of the picture.

If it is a television series, he has an ongoing responsibility to the network, for example, in relation to their promotion and exploitation.

So I look at it as being a five-step process from conception to exploitation.

Q All right.

And could you tell me what the difference between an executive producer, a producer, and an associate producer would be at Twentieth Century?

A Yes. An executive producer is very simply a man who [203] supervises one or more producers.

The producer we have just discussed, I hope that was sufficient, and the associate producer, is sort of like an assistant general manager, if you will accept the concept that the producer is a general manager.

The associate producer generally speaking is an extension of the producer in order to complement him in areas where he doesn't have either by background or training, all the experience or expertise he would like.

Q All right.

Would this be substantially the same with other companies, to your knowledge?

A As far as I know, it is substantially the same throughout the industry.

Q Now, with respect to the producer function, what is their function in dealing with employees as they work on the production?

A Well, the producer is the boss, so that he will select the people and hire them.

He will terminate them and see to it that they have the facilities and equipment that they need.

He will supervise their jobs to the extent that they are doing what they are supposed to be doing in the way that they are expected to do it.

And he is to perform all the other functions that a [204] boss is likely to perform; if there are disputes he will solve them and if there are complaints, he will attend to them, and if there are requirements, he will examine them.

Q All right.

You mentioned that they handle problems as they arise in the production; could you give us some examples of problems that arise with employees that would be dealt with by the producer function?

A I can give you a personal example of one that happened. My wife is an actress, and on a show called "Bonanza" she was performing in the role of a trapeze artist.

That was her assignment as an actress.

And she had the principal role as the female in the show, and she was to do all the dialogue.

The high wire work—the business of climbing the ladder and going on the high wire—was to have been done by a double; because she is not trained to do that, and it is pretty dangerous work.

And the second day into production on the set, the director instructed her to start to climb the rope.

And she said to him, "I am not going to do it, and I don't have to do it."

And he said, "We are running out of time and we don't have time for the double to come in, and I want you to climb the rope."

[205] And she refused and she went to the producer and told him her problem.

And he agreed with her and told the director to use the double.

• • • •

And that involves the handling of the actors, the placement of the camera, the direction of the crews, the utilization of the sets and wardrobes and makeup and all the physical elements relative to the production in front of the camera.

Q Does the director participate in the hiring or recommendation of hiring of any of the production personnel who work on the set?

A I am not really sure what you mean by production personnel.

Are you talking about crews?

[206] Q Crews.

A Well, the director obviously is a very important members of the creative force of that film.

And the director's desires are going to be of a paramount interest.

If the director, for example, has a cameraman who he has worked with in the past and who whom he has a preference for, unless there is some reason that that cameraman would not be employable, the director probably would get his request.

And if he would say, "yes, I want that cameraman," he would get him.

He certainly has a tremendous influence over the decisions relative to the members of the cast; particularly, in secondary parts.

• • • •

[207] Q All right.

And during the daily production on the set, when the director is in charge, who sets the hours that they will work?

A Well, you are talking about several different groups of people.

They may be set by several different people.

The director works very closely with a unit manager, and production manager on the show. The director will —at the outset when the plan is first determined, the director in concert with the producer and the production staff, will [208] determine what the schedule of the picture is going to be, how many days it is to shoot, and how many hours each day, and what is to be done each day, and things of that sort.

Once that plan is established and a budget is generated in response to that plan, very little in the way of deviation is permitted without a great deal of discussion and additional decisions to be made.

• • • •

[209] Q All right.

And could you tell me what the story editor, or executive story editor function is?

A At our studio, we don't have either. We have only two people in that category, and they are called "executive story consultants."

But it is my understanding that generally throughout the industry, the functions of all these people are identical.

They are—they have the responsibility on a day-to-day basis for acquiring and developing the scripts necessary in relation to an ongoing television series.

Specifically, they supervise the writers' functions.

Q Could you describe the nature of the duties of the story editor function?

[210] A Initially the story editor will prepare for his producer, a list of available writers who are suitable to the project.

He will discuss with the producer each of these people on his available list as to whether or not this individual or that would be the most desirable.

He will conduct interviews with the writers, will participate in all the stories that they place, and participate in the decisions that are made in relation to the story and teleplay.

And once those decisions are made, he will supervise the writers who have been assigned to see to it that the stories and the teleplays come in consistent with the goals of the operation.

Q And who participates in the decision with him?

A Well, almost all creative decisions are made as kind of a group effort, particularly in this area.

You have a conference that will take place with the executive producer, if there is one, the producer, the associate producer, and the story editor and frequently the writer, at which a discussion will take place relative to the merits, the costs and the values of a particular story.

And it isn't always easy to tell you who makes that decision because it is a give and take kind of discussion. But at the end of that discussion, a decision is made.

[211] And it is a participatory decision for the most part.

The responsibility for that decision however rests with the producer and the executive producer, if there is one.

Q All right.

But what I actually meant by that, the decision to select a writer?

A Oh, all right.

Who makes the decision?

Q Who makes the decision?

A Yes.

Q Would a story editor?

A It is conceivable that for the most part, it is a producer who makes that decision.

Q Is the producer alone?

A Well, very rarely are any of these kind of decisions made alone.

Q All right.

A Generally speaking, they are the result of a discussion or a conference.

Q And does the story editor have a function in dealing with employees as they work under him?

A Well, he has to—again, as I said, he supervises the writer, so that he will assign—make assignments to the writers.

He will discuss their projects with them.

[212] When the story is turned in, he will analyze and meet with the writer and instruct the writer as to what is wanted, what is good, what is bad, what needs to be rejected, what needs to be strengthened, what has to be sharpened up, and what has to be eliminated.

He will supervise the writer; and those of the employees that he has contact with.

Q All right.

And does he make any recommendations with respect to the termination of writers?

A Yes. Decidedly he does.

Q Could you give us the circumstances?

A Well, we find particularly in television, that some of the top writers have a tendency to accept more commitments than they are able to handle, really.

And every now and then you find that you are getting into a bind, having made a commitment to a writer whom you know is going to be unable to deliver in time,

because he has too many other commitments that he is favoring.

And because we operate on a very restricted time schedule in television, we have commitments and air dates with the network that we have to meet.

It is not infrequent that the story editor will come into his producer and say, "Look, I know we have got a commitment with—" so and so "—but I would like to get a [213] script from him. But I know what he is doing over at Warners and I know what he is doing over at Columbia, and there is no way that we are going to get that script in time, and we had better dump him and go to somebody else quick or else we are not going to be on the air with that show."

• • • •

[216] Go ahead.

MR. GOLDMAN: Larry Peerce—

JUDGE: You are on a different page now?

MR. GOLDMAN: No. I am on the same page.

JUDGE: Oh. I see.

MR. GOLDMAN: These are the names that I skipped over on the page, and I want to make it sure that it is clear on the record that we didn't inadvertently leave them out.

And we left them out for a reason, and that is that they are not members.

Our records do not show that they are members.

JUDGE: All right.

MR. GOLDMAN: Larry Peerce, Steward Rosenberg, Stephen Spielberg, David Lange and John Kubichan.

JUDGE: All right.

• • • •

[230] THE WITNESS: May I have the question again?

Q (By Mr. Keaton) If you don't mind, I will rephrase it.

A All right.

Q In your experience—based upon your experience, Mr. Barron, if a producer were to be disciplined along the lines described in Rule 30, which you have read a

moment ago, would it have any effect on his effectiveness of the producer to your company, and if so, what would be the effect?

A Well, it would certainly be totally destructive to the producer's effectiveness.

Q Would you explain that answer?

[231] A If I may take it back a little bit. Okay.

The producer's—among the—producer's principal responsibilities are the overall supervision of the tastes and creative judgments that are necessary in the production of either a theatrical motion picture film or a television series.

The producer must meet with and discuss with and supervise the writers who are hired.

And equally as important, the producer has to be able to attract the top writers to his series.

We are in a fiercely competitive business, and in any kind of business venture, there is only a handful of top people.

There is an awul lot of middle ground people and there is a handful of people at the lower end of the scale.

That company which wishes to and needs to succeed has to be in a position to attract the very top writers possible. And to the extent that the producer would not be permitted to deal with those writers, and would be dishonored among them, and would be subject to sanctions of their Guild, his ability to attract those writers would be totally destroyed.

We would in a sense have a producer with no television series to produce.

Q All right.

You mentioned earlier that in the creative area on a [232] television or theatrical production, a great deal is done by management committees.

Now, relating specifically to such things as hiring casts, employing writers and employing the key below the line elements such as cameraman and head wardrobe person, and so on, or possibly the head of makeup, would you describe to us who is on this kind of team, and how this team reaches a decision?

A Well, the way in which the team—I will answer part two first.

The way in which a creative team reaches a decision is still a mystery to all of us. We have been unable to solve that problem.

But generally speaking, you are talking about what we call the production executive group, which would be the executive producer, if there is one, the producer, the associate producer, the director, and very often the production manager or the unit manager.

These people together sit down and discuss in either one meeting or a series of meetings the various alternatives that are available to them in each of these classifications.

When you talk about a wardrobe head, for example, the kind of considerations that have to be taken into account are, number one, how much of a creative input is required on this particular show.

[233] Number two, do the creative inputs available from a person "X" satisfy the needs of our show?

Number three, how expensive is he?

Number four, how expensive is he to work with?

In other words, he may not charge you very much per week, but his way of operating may push your budget right out the window, and on down the line.

Can he be trusted to comply with our schedule and get the work in on time?

Number six is: is he reliable, etcetera, etcetera, etcetera.

And all the various members each of whom in this discussion would have something to contribute, either having worked with this person in the past, or having had a financial calamity with him on some other program, or what have you, all of them put their information together and discuss it out.

And somehow or other, a decision is elicited as a result of that meeting.

The same thing would hold true, of course, in relation to casting of principal actors.

And always it is done under the supervision of the top "Joe" who is the producer.

When you have a determination to be made for the selection of a writer on a television series, is there a [234] similar team operating, and if so, what does it consist of—who does it consist of?

A Yes. To understand a little bit more, if I can flush it out a little bit more.

Q Please do.

A Because there is a need to deliver a new television program each week to the network those people whose services take longer than a week to perform, have to be supplemented by additional people.

In other words, a director, for example, needs some time to prepare. Then he needs a week to shoot and then he needs some time afterwards in the post-production area.

So it isn't possible to use one director for all the episodes that you have to deliver, just as it isn't possible to use one writer for all the episodes that you have to deliver.

Sometimes the writer will take four to six to eight weeks to deliver a script for a one-week show.

So that generally speaking there are ongoing conversations throughout the course of the production of a television series as to additional people who become available and to evaluate their availability and their desirability, and ongoing decisions are made throughout the course of the series.

Hopefully, somewhere near the beginning you can lock in, [235] if you will, on a team—five, six or seven writers who you can continue to repeat throughout the year and two or three or four directors who you can continue to recycle throughout the year.

And once those decisions are made, if it isn't necessary to move off of that spot, those decisions don't have to be made any longer.

Q All right.

I think from there, I would like to go to the basic question that I was asking—

A I am sorry.

Q —and a team makes the selection of that team?

A Well, it would be essentially the same team, except not including the director.

So that woud be the executive producer, the producer, the associate producer and probably the production man.

Q Would this story editor or story consultant play any part in that?

A Yes. I think he would.

Q All right.

Can you tell us whether directors perform any function in handling grievances?

A Constantly.

Q Could you give us some examples?

A Yes; because problems are coming up all the time on the [236] set.

And the boss on the set is the director. And when a problem comes up, it is brought to him.

The question as to whether or not somebody had a call at 7:00 or at 7:30, or whether or not they are to be permitted to leave the stage at 4:30 or 5:30.

Any of those disputes whether—whatever it is, whether it is connected with the physical production of the film on the stage the boss is the director and all those complaints, grievances and problems are brought to him.

Q All right.

Now, who, if anyone, makes an initial determination of disputes about credits amongst the five, six or seven writers that you might have in a TV series?

A Who—let me have the question again.

Q There is sometimes a dispute about screen credit of various writers; is that correct?

A That is correct, yes.

Q All right.

Who makes the initial determination of that kind of dispute?

A Generally speaking, on a feature film, it would be the producer. On a television series, it would be the producer, and the story editor.

And they would then submit a tentative list of credits [237] to the Writers Guild.

Q What happens if the Guild disagrees with that determination?

A Well, I don't know—the Guild has to approve it. But anyone of the writers could also dispute it, at which point they have an opportunity to arbitrate it before the Guild's Credits Committee.

• • • •

[CROSS EXAMINATION]

[238] I notice on this list that was supplied to us as of a few days ago, that we have the capacity listed, for example, for Gerald DiPego "writer/associate producer."

I take it that is a different capacity other than a straight associate producer?

A No. The definition of an associate producer as I attempted earlier, Jerry, was somebody who will perform as an extension of the producer, to supplement the producer in areas where his expertise or his background isn't—doesn't have all the strength that he woud like it to have.

In this case—in the case of Jerry DiPego, he brings creative inputs at the decision level that his producer is not able to perform.

And so he has been hired in both as the writer and as an associate producer to supplement those areas.

Q In other words, he complements the producer?

A He complements the producer.

Q He can perform—he can engage in activities that a producer is unable to engage in, such as a writing function?

A Or unwilling and not having the time—

Q Such as the writing function—polishes, touch-ups?

A Yes, certainly.

• • • •

[240] JUDGE: Mr. Goldman, do you want to repeat the question, please?

MR. GOLDMAN: Yes. Well, could I have the question read?

(Question read.)

Q (By Mr. Goldman) As I understand it, you do have categories of employment of straight out producers?

A Absolutely.

Q All right. And directors?

A Absolutely.

Q You also, do you not, have employment categories of writer/directors?

A Yes.

Q Or writer/director?

A We employ people who are capable of performing in more than one category.

Q All right.

[241] Now, not every director is also a writer/director?

A Absolutely not.

Q All right.

Not every producer is a writer/producer?

A Right.

Q And not every producer is also a director and not every director is a producer or a writer?

A That is true.

Q So some people can function in all three? For example,—

A Stewart Rosenberg.

Q Ernest Lehman, writer/producer/director?

A Yes.

Q And some people when they function in all three, don't function in all three on one specific project, but might be a writer on one project and a director on the next, and a producer on another.

Is that correct.

A Yes.

Q All right.

Now, the creativity of these individuals that we are dealing with, from their employment at Twentieth Century-Fox, they might be called to direct a particular portion of a particular program one week, and then writer a particular portion of a different program that next week.

Is that correct?

[242] A May I have that again?

Q With these creative talents that you have at Twentieth Century-Fox, will you get it to a writer/

director, he might be employed in the capacity of a writer one week for a particular program, and then the next week on an altogether different program, he might be employed as a writer.

Is that correct?

A Theoretically, it is possible—

Q Isn't that correct?

A Yes, it is possible. It rarely if ever happens quite that way, but it certainly is possible.

Q Or the reversal? One week a writer and the next week a director?

A Yes. That is also possible.

Q Now, I would like to get in the area of producer. Isn't it more so that you find writers being a "hyphenate" as it used in the area of producer as opposed to director?

A Well, the hyphenate is, you know, something that causes a lot of people trouble.

And all it really means is someone who can perform in two different capacities.

The most common hyphenate in our industry has nothing whatsoever to do with the writers. It is the actor/director, that is typified by Jerry Lewis or Gene Kelly.

It is the most common kind of hyphenated situation that [243] we find.

In television, however, because of the exigencies of the form of television, because of the fact that a number of different writers have to be employed in relation to one ongoing series, and because of the fact that all of the different writers have to write to a set of established standards, the character can't change from week to week.

His relationship cannot change from week to week.

He can't be dead this week and alive again the next week.

And particularly, on a new series that is not yet been on the air where you may have 9, 10 or 12 episodes being written before anyone has seen it, perhaps being written by as many as seven or eight different writers, someone at the top has to be the unifying force; has to have the ability to take a script that is turned in two days before production and himself change it so it conforms to the overall concept of the show, so that it is consistent both from the creative standpoint and from a story standpoint.

And because of that, because of the pure confinement of the way in which television episodes are made, writers frequently find that they have been able because of their ability to show abilities over and above and beyond those of a writer—they find that they have been elevated to the producer function in television.

• • • •

[244] And what he is doing as a producer in television, as you have just described, is taking the finished product that another writer has given to him under a term contract and he is changing it to fit the outline as set forth by the production company.

Like for example, the 12 episodes that were written before one is aired?

A Yes. They are not really finished products when they come from the writers. They are not finished until they have been polished by the producer.

Q Or polished by a writer?

A Well—but that function is the producer's function at that point. That is not the writer's function.

• • • •

[248] Q All right.

I just want to get something straight for the record. I thought earlier in the testimony Mr. Barron, you stated that the term "executive story—I think Mr. Mittleman testified that there was a story editor and an executive story editor, and I believe you stated that you don't use that terminology—

A Yes. He is an executive story consultant.

Q Executive story consultant?

A Yes.

Q And what is the other one?

A That is the only one we use in that category.

Q All right.

Does the executive—with your familiarity with the industry, does the executive story consultant—is he the same as the story editor and the executive story editor?

A That is correct.

Q They perform the same function?

A They perform the very same function.

• • • •

[REDIRECT EXAMINATION]

[250] (By Mr. Fisher) Mr. Barron, you testified that producers perform at various times writing functions, as for example, polishing and so on, when they do so, are they acting as producers, or as writers?

A They are acting as producers. That is part of the producer's function.

Q All right.

And would you explain that answer a little bit? Is there anything more to say about it?

A Well, there really is not any more to say about it. [251] One of the requirements of being a producer and one of the elements involved in performing the producer's job is to make those kinds of changes that we describe traditionally in our industry as "A through H up to a polish," which is the terminology, I guess, that comes out of the 1970 Writers Guild Agreement.

Q So called incidental writing services?

A Incidental writing services, which have been carved out and which have been identified as the province of the production executive group.

Q Which would include?

A The executive producer, the producer, the associate producer, the director and story editor.

And one of the requirements of being a producer and one of the capabilities that the producer must fulfill is to take the creative material that has been delivered to him by the writer, and alter it in such a way to the extent that he is permitted to to make it more acceptable.

Q All right.

And then you earlier testified that many of your producers and directors are not Guild members, to your knowledge?

A A great many of them are not.

Q Are these same functions performed by them?

A Absolutely.

• • • •

[252] And the same would be true with these other categories named; is that correct?

THE WITNESS: They perform exactly the same way.

• • • •

[RECROSS EXAMINATION]

[253] Q (By Mr. Goldman) I would like to ask you this, Mr. [254] Barron: when you are referring to the witer/producer, you are not referring to a producer who normally and only performs the A through H categories, but you are referring to somebody who does more work in the field of creative writing?

A That is absolutely true.

• • • •

[REDIRECT EXAMINATION]

[255] Q And in those instances where you have hired a man as a producer/writer or writer/producer, whichever, when he is serving as a producer, dies he at that time sometimes also perform functions as a writer?

A Yes.

• • • •

[260] MR. LE VINE: Yes, sir.

We will call Sid Sheinberg.

Whereupon,

SID SHEINBERG

was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT-EXAMINATION

• • • •

[262] Is this a complete answer?

Q Are you familiar with the term "Prime Time"?

A Yes, sir.

Q And could you define what Prime Time is?

A Prime Time—

Q In the television industry?

A Prime Time is a phrase which has historically denoted that period of the evening when the largest numbers of television sets are being used in the country.

That period of time over the years has undergone what I would describe as some slight modification in terms of exactly when it starts.

But I think it would be generally conceded that it is that period of time that starts somewhere between—

somewhere around 7:30 and ends at 11:00, and possibly it starts [263] earlier on Sundays.

Q All right.

How many hours of prime time are there generally available in the industry?

Is there a common figure that is generally denoted as prime time?

A At this time due to the application of the so-called prime time access rule, there might be some ambiguity in the sense that the networks program prime time from 8:00 to 11:00 during the week, and program prime time either from 7:30 to 10:30, or from 8:00 to 11:00 even on Sunday.

So the number of hours of prime time would be the sum of those hours.

Q All right.

Is there a common figure that is used in the industry as prime time for the entire week?

A I imagine that you would say it is 63 hours.

• • • •

[264] JUDGE: Well, Mr. Goldman, let's not take too much time on it.

At this point in the testimony, Mr. LeVine is apparently trying to establish the weight to be given to this witness's testimony, presumably with respect to any events effecting his organization that he might testify about.

It is preliminary; I will overrule the objection.

Q (By Mr. LeVine) All right.

Could you answer the question, please?

A At this present time, Universal Television produces or is part of a production entity which produces approximately 13½ hours of national network prime time television.

Q All right.

And, to your knowledge, does any other studio produce that many hours of prime time television?

A No, it does not.

• • • •

[268] A Well, the recommendations and decisions with regard to all or substantially all so-called above-the-line

personnel and participation, and the selection or approval of many key below-the-line personnel would be all encompassed within the producer's responsibilities and function.

Q All right.

And could you describe what "above-the-line" and "below-the-line" means?

A Yes. The term above-the-line—the terms above-the-line and below-the-line refer to where certain functions appear on a—have historically appeared on a formal budget which has been used historically in the motion picture industry; and typically, the producers, the directors, the writers, the right conveyers, these personnel and the cost of these elements in personnel typically appear above at double line or—on this budget, hence the phrase "above-the-line."

Q All right.

Are talent personnel above the line?

A I didn't mention talent personnel? I should have. The cast—I use the term, and I think that is what you mean—the term cast, of course, is above the line.

Sometimes there are other personnel that are sometimes above the line and sometimes not. Musicians, for example,— [269] I believe some companies treat them as above-the-line personnel and some companies treat them as below-the-line personnel.

Of course, everyone else connected with the production of a motion picture or television series who doesn't appear above the line, would appear below the line.

• • • •

[270] Q All right.

[271] And does he have the primary responsibility to attempt to resolve the problem?

A When you say "he"—

Q The producer function?

A —these problems arise with associate producers, who they try to get the problem resolved in some instance, or with the producer; and it is the responsibiity with this entire group to try to get the problem resolved.

And absent crisis proportions their responsibility is total responsibility.

• • • •

[273] Does he recommend the hiring of any of the people who participate in the actual filming of the production?

[274] A Do you mean to restrict that question to the cast or broader?

Q To any of the people who are involved in that.

A Yes. I would say that generally speaking,—and there again I don't believe that anything that here said will apply to all directors in connection with all projects, and their relationships with all producers at all times, and do not want to convey that impression—but generally speaking, he would participate in the selection of the cast and "participate" may be even a weak word—make strong recommendations for approval of the producers as to who the cast would be.

And he would participate in revisions of the script, including recommendations as to writers to do rewrite in many cases.

• • • •

Q All right.

And do problems arise in the area of the filming?

A Yes. Problems do arise in filming.

Q All right.

And whose responsibility is it to resolve the problems with employees during the filming?

[275] A Certainly a problem that arises during—when you say "filming," may I interpret that as meaning at least in the case of film—principal photography in this instance?

Q With respect to the director's function?

A Yes.

Generally speaking, the director would have the responsibility for adjusting those kind of problems that would arise in the filming—in the photography of the film.

Problems such as between self and the cameraman or between himself and the performers who have been engaged, or with the performers with each other.

And in some cases it is between the performers and the material, or the writer, who may also be sitting there.

Q All right.

Could you tell me what the story editor function or executive story editor function would be at Universal?

A Yes. The story editor function—and the phrase unfortunately today in the industry has a number of substantially identical phrases which mean the same thing, ranging from story consultant to executive story consultant and various other titles dependent upon vanity, negotiations and whatever—and this function generally would mean the function of dealing with the preparation of literary material by the writers, directing and controlling the work of the writers, suggesting directions and modifications in their [276] work, recommending the termination of the engagement of the writers.

We would conceive of them as production executives in the generic sense whose primary responsibility is the preparation of the material.

• • • •

[280] CROSS-EXAMINATION

• • • •

[285] We are not presently engaged in the business of producing programs in the United States for non-prime time other than that, and other than in the instances of so-called motion [286] pictures for television, which we do produce with some frequency.

Q All right.

Mr. Sheinberg, are all producers, executive producers and associate producers, required by your company to perform writing functions?

A No.

Q Are some producers, executive producers and associate producers required to perform writing functions?

A Sometimes.

Q All right.

When a producer, executive producer and associate producer is required to perform a writing function, did he

have to come under the Writers Guild Basic Agreement for 1970?

MR. KEATON: Objection.

It is asking for a legal conclusion. The Writers Guild contract speaks for itself.

Furthermore, it is also immaterial.

MR. GOLDMAN: I will withdraw that question.

Q (By Mr. Goldman) All right.

Are you familiar with personal service contracts of executive producers, producers and associate producers?

A The actual contracts—the legal documents?

Q No. Not the actual ones, but the basic contents of the [287] documents?

A In a general way.

Let me amplify my answer. I would say I have a general familiarity with the "deals" as distinguished from the specific familiarity with the "deals" or the contracts.

Q All right.

If a producer, executive producer, or associate producer is required to perform a writing function, to your knowledge, do you know if that producer, executive producer, or associate producer is required to have a personal service contract setting forth the fee to be paid for his writing services separate and apart from his other services?

MR. LE VINE: Your Honor, I would object to that question as going beyond the scope of direct with this witness.

JUDGE: Mr. LeVine, that is not an objection that I normally sustain, since I believe every witness may be cross-examined as to any matter that is relevant or material to the issues in the case.

And—

MR. LE VINE: Your Honor, may I interject at this point?

The Respondent intends to call this witness as their own witness at a future time.

And we offer today to let them go through everything that they wanted with this witness while they had him on the [288] stand.

• • • •

[289] I think your Honor without giving away our side of the case, that it is quite evident through the opening statement of Mr. Hackler the first day of this trial, that the writer—a professional writer is a unique character.

That there are certain creative functions that go on with the writer, and there are certain people that can write and certain that can't write.

And that what we are trying to show, is that this activity—the writing functions as such—that all the cases that the Board has with respect to supervisors, do not really fit this case.

This is sui generis; this is in and of itself a "new breed of cat."

We feel that we can show this, and we feel that—I feel it is proper to ask this type of question to show it.

MR. KEATON: May I be heard, your Honor?

JUDGE: Just a moment.

All right. Be specific with respect to your question.

• • • •

[296] Q (By Mr. Goldman) All right.

Mr. Sheinberg, are you familiar with the collective bargaining agreement between the Writers Guild of America and the AMPTP and the networks which cover the writers' functions?

A Generally.

Q All right.

And when I am talking about the writing functions, I am talking about those functions which are not included in the A through H group which are included in the definition of writer.

• • • •

[297] Mr. Goldman's question.

Which contract are you referring to, Mr. Goldman?

MR. GOLDMAN: The blue book.

MR. LE VINE: He read both, however.

JUDGE: All right.

Let the witness have a copy of the blue book, which I think is General Counsel's Exhibit 2, and if you will be so kind as to give me a copy—

MR. GOLDMAN: Can we taken a two-minute recess so Mr. Sheinberg can read that, and become familiar with that?

JUDGE: All right.

But I am not going off the record.

We will just sit here until he tells me he read it.

MR. GOLDMAN: May I smoke a cigarette, your Honor?

JUDGE: Gentlemen, in order to give you a recess for smoking, we will resume punctually at 10 minutes past 11:00 by that wall clock.

(Short recess taken.)

JUDGE: On the record.

Before going any further, I would like the witness to [298] identify for the record, those pages in the—in General Counsel's Exhibit 2, which he has read during the recess.

THE WITNESS: I have read Article 1, Sub-Section C-1, and I read that—

JUDGE: That is on page 7?

THE WITNESS: Page 7.

JUDGE: Did you continue reading over through page 8?

THE WITNESS: I read page 8 until I got to the last two paragraphs, which didn't seem pertinent to the question.

JUDGE: All right.

What other pages?

THE WITNESS: And I read page 53, Sub-Paragraph B of Article 14, just the first sub-paragraph.

JUDGE: All right.

Mr. Goldman, if you will proceed?

Q (By Mr. Goldman) All right.

Now, Mr. Sheinberg, when I refer to writing functions, I will be referring to those functions that you have just read in the collective bargaining agreement; do you understand that?

A I understand what you are saying.

• • • •

[299] Q (By Mr. Goldman) Yes. With respect to writing functions required of producers, executive producers and associate producers—

A Who are professional writers?

Q Who are professional writers, and who are described in that collective bargaining agreement, when a producer, executive producer, or associate producer perform services described in that collective bargaining agreement, as writing services, is there a requirement for a separate paragraph in his personal service contract or a separate personal service contract covering those specific writing functions?

MR. KEATON: I am going to object again upon the grounds that the answer to the question is found in the document. The witness is being asked to state a legal conclusion.

[300] And—

JUDGE: Just a moment. I think the problem, Mr. Goldman, is your use of the word "requirement."

MR. KEATON: That is exactly right.

JUDGE: It is required by whom and in what circumstances?

If required by the contract, then the objection is correct.

MR. GOLDMAN: I will leave out the word "requirement."

Q (By Mr. Goldman) All right.

I will ask you, is there normally a separate personal service contract covering those writing functions?

A Yes.

Q Well, as I understand it, Mr. Sheinberg, not all producers, executive producers or associate producers perform writing functions covered under that collective bargaining agreement; is that correct?

A That is right.

Q All right.

Now, those producers that do not perform writing functions under that collective bargaining agreement, in what respect is their function and duty as a producer different from the producer who performs writing functions under that collective bargaining agreement?

A In an instance when the latter producer is also writing, [301] or generally?

Q Generally.

A None.

Q When this producer is writing—take your second category—what is the difference in duties and functions and responsibilities?

A At the risk of a simplistic answer, when the producer is writing, he is performing writing services.

And he may or many not during the course of the performance—I don't want to say during the course—during the period of his performance of those writing services, also be performing services of a producing nature of a sort identical to those that might be performed by someone who is not a writer, or not rendering writing services, or he may not, depending upon his work habits, the evigencies of the moment, and a variety of other factors.

In the simpelst sense, he might either be at home at a typewriter doing nothing but writing during that period of time, or he might be at the studio or at home producing the series and intermittently writing also in the performance of the so-called writing services to which the second group of persons—I'm beginning to not even to understand myself—he is performing writing services.

And he might even be writing concurrently with the producing or he might not be writing concurrently with the [302] producing.

Q All right.

In other words, as I understand it, you describe the producer's duties—and when I say "producer" I am talking about the gambit of producers—the executive producer, the producer and associate producer.

A Right.

Q That he—which I call straight producer.

A Okay.

Q And not the hyphenate.

A Not the hyphenate?

A Not the hyphenate; that he is involved in the selection of the writer.

And that as the production function is the complete responsibility from the beginning to the end of that

product. And I believe Mr. Barron, from Twentieth Century-Fox, described it as a five-step approach, one from the initial conception; two, the planning; three, the execution; four, to the finishing, which is post-production; and five, to the exploitation, which is actually the selling of it.

That is what the producer is involved in; is that correct?

A Yes. I would say that is correct.

Q All right.

When you have a writer/producer, in addition to those [303] responsibilities which I have described as—just before the five-step approach that Mr. Barron analyzed for us, he performs an additional duty, and that is of writing; is that correct?

A When he is "writing" or when he is "producing"?

Q A writer/producer?

A Well, I think you are confused in this sense; the fact that he is a writer/producer does not affect his producing services any more than if he were a lawyer/producer, or Jewish producer.

If he is writing, it doesn't make any difference that he is a producer at the time or is not a hyphenate; he will be writing with regard to those services.

Q Yes.

A May I finish?

Q Yes.

A If the question really is: does a writer/producer of the garden variety that you have reference to, perform services as in the run-of-the-mill producing world—is it different from a producer who is not a writer?

And the answer to that question is no.

Q All right.

You describe—you said earlier that a writer/producer when he is hired on as a writer/producer, for a given product, that concomittant with his producing function, he is also [304] doing his writing function, and that there are times when—

A I did not say that.

Q Well, is that not true?

A No. It would only be true if he—it is a truism. If he is performing—if he is writing, he is in fact, writing.

MR. KEATON: Your Honor, I would like to renew my objection.

I think we have had enough of this to show how irrelevant and immaterial this is.

JUDGE: No. I'm going to overrule that.

There is a distinction that will have to emerge on that point.

Q (By Mr. Goldman) The writer/producer, when he is involved in a production—the one through five steps, and is actually involved in the writing function of that production, he cannot do both at once;—is that correct?

A No—

Q He cannot do both the writing function and the producing function at the same time?

A That is not correct.

Q That is not corect? He can do both?

A Some can, yes.

Q Some can?

A Some can and some can't.

[305] Q He can do the producing function and the writing function at the same time?

A Yes.

I would offer an analogy to drafting a contract and trying the lawsuit.

Q Yes. But you can't be drafting the contract while you are trying the lawsuit.

You do it after or in between or at breaks in the lawsuit; is that what you are trying to analogize into?

A No. It is my opinion that if a lawsuit were to go on for a period of 12 weeks.

Let's say that that is the period of time that might be involved in the production of an episode of a television series.

That during that period of 12 weeks a producer who also has within his bag of tricks, as it were, the ability to write, and as a writer, that he might within that period of 12 weeks, also render writing services.

He might write a book, a screen play—what I am suggesting is that similarly a lawyer who is in the process of trying a lawsuit, which takes a period of 12 weeks, if he happens also to be a draftsman, might be able to write a contract.

Obviously, he couldn't do it in open court during the process of it, but he could do it intermittently.

[306] And—

MR. GOLDMAN: Exactly.

THE WITNESS: —or otherwise, he might be reading a magazine or something.

Q (By Mr. Goldman) All right.

So in other words, if I understand it correctly, that the writer/producer does the writing work also while he is doing the producing work, but not necessarily at the same time?

A No. Some people who are producing, and have within their skills, writing, might during the period of time, also do writing services.

Q For that production?

A Not necessarily for that production. As a matter of fact, obviously he cannot be writing for that production when the production is finished, for example, even though he would still be producing.

Q But he could be performing writing functions for that project or other projects?

A It is possible that he could be during the calendar period of time performing such services for that or another project.

• • • •

[311] MR. LE VINE: Yes. We will call David Victor to the stand, please.

Whereupon,

DAVID VICTOR

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[312] Q Could you tell me what your duties are as an executive producer?

A Well, I supervise the production of all the series that I am involved with.

And in addition to that, I have a series of specials called "Portrait."

And I'm also involved in movies of the week and also creating pilots for ABC.

Q All right.

And could you tell me specifically what you do as an [313] executive producer?

A Well, I supervise all the aspects of production, of course, several layers removed from day-to-day producing, because there are a number of shows that I oversee.

I hire producers. I hire directors. In a sense, through my associates, I hire and fire writers.

I also supervise the budgets. I also go down the set in case there is a crises and try to solve those.

Q All right.

You mentioned that you solve crises on the set. Could you describe the nature of the problems that arise that you personally would deal with?

A Well, if they show an episode is really in trouble and going far behind in its schedule and budget, I try to do something about that.

• • • •

[314] A Oh, yes. I try to be the court of last resort; I try to stay out of the day-to-day problems and really move in when it becomes important that I do.

But there have been examples of that.

Q All right.

And could you describe the types of—

A Well, I wasn't in here before, but I think many times there are tempermental problems—disagreements creatively between director and the camerman, or one or the other threatens to walk off the set.

And that type of problem arises, and hopefully not too often, because I am a good producer and I try to keep them to a minimum.

Q All right.

And could you tell us some other types of probems that arise?

A Well, in some instances, I suppose my story edi-

tor may have a disagreement with a writer who is employed, and in some way I try to make peace there.

I try to solve that particular kind of problem.

• • • •

[315] Q (By Mr. LeVine) It was agreed between Counsel for the General Counsel and Counsel for Respondent that David Victor, executive producer, was told by Allen Griffis on the telephone—

MR. KEATON: What date?

MR. LE VINE: I believe that it was on April 10th that it would be brought up on disciplinary charges, and the strike rules would indicate the extent of the discipline if he closed the picket line.

JUDGE: You are proposing that as a stipulation?

MR. LE VINE: Yes. It—is that—

MR. GOLDMAN: Yes. I so stipulate.

JUDGE: It that acceptable to both of the Charging Parties? Mr. Keaton?

MR. KEATON: Yes, your Honor.

JUDGE: Mr. Fisher?

MR. FISHER: Yes, sir.

JUDGE: All right.

[316] The stipulation is accepted.

• • • •

[320] Q And you as an executive producer—do you engage in any writing functions?

A No.

Q Are you in the process of creating pilots for ABC?

A No. The only creative writing I have done in my 14 years as a producer and executive producer—I have never written a teleplay—I was responsible one way or another [321] for six story credits during the 14 years.

And two of them eventuated in creating credit for Marcus Welby, M.D. and Owen Marshall.

That is the only writing I have done in 14 years.

Q All right.

And when you create pilots for ABC, you don't do any writing?

A I supervise, unless as I say, when I create it, it goes through all the steps.

I write out a format of the characters and send a copy of it to the Writers Guild.

Then it is up to them whether I get separation of rights.

Q All right.

In 14 years as a producer, have you polished any scripts?

A A minimal amount as I understand I am about to do under Section A through H.

I have not written any single scenes or any pages of any kind.

Q Is it your testimony that you have only done A through H writing?

A That is right.

Q As set forth in the contract?

A Except for the few story lines that I have explained, in which I received credit on the screen.

[322] Q When you are doing the creation of the pilots for ABC, you are doing the A through H categories?

A I work with other writers in the creation of the pilot; I supervise their writing.

Q All right.

You don't perform any writing?

A Unless, as I say, I become a co-creator or a creator, in which case, it goes through all the steps of my writing out a format, a list of characters in the original story, which goes to the Writers Guild.

Q With respect to movies of the week for NBC, do you perform any writing functions?

A I supervise the writers.

Q Supervise the writers?

A Supervise the writers in the capacity of A through H, nothing else.

Q And with respect to Griff, which will be starring Loren Green, have you written any scripts for that?

A No, sir.

Q All right.

Are you presently doing A through H writing functions for Griff?

A There are no Griff scripts.

Q All right.

Now, are you doing A through H writing on either Marcus [323] Welby or Owen Marshall?

A We have no scripts yet on Owen Marshall, and the only work we are doing on Marcus Welby is that there are half a dozen scripts left over from the previous four years.

We have been in production for four years.

And with those I only do supervisory A through H work.

• • • •

Q All right.

[324] Now, what is the nature of the services that you are compensated in that areement between Universal City Studios, Inc., and Groverton Productions, Ltd.?

A In the years that I have been with Universal, these are only producing or executive producing functions.

• • • •

[325] Q All right.

Now, how long have you been under this loan-out agreement with Universal through Groverton?

A I believe it is four years.

Q And in the four years that you were involved in this situation, did you ever perform any writing functions?

A Except in a supervisory capacity, A through H, none, except for the couple of incidents which I have told you about.

• • • •

[330] MR LE VINE: We will call John Epstein, please.

Whereupon,

JOHN EPSTEIN

Was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[331] Q All right.

And do you recommend the hiring of any persons involved with the production of the film?

A Yes.

Q And could you tell me how that comes about and who you would recommend?

A In various areas I am involved in—in almost mostly involved in the hiring of writers, the hiring of directors, the choice made in the hiring of the actors; and in some aspects, I am involved in the elements of the production crew.

Some of that is done by the Production Department at [332] Universal, and some of it is done in concert with the producer.

Q All right.

Do you recommend the hiring of writers?

A Yes.

Q All right.

In the course of your duties as a producer, do grievances or problems arise in the production of the films?

A Yes.

Q Could you tell me the types of grievances that arise that come to your attention?

A There have been some earlier references to the kind of things I get involved with when Mr. Victor described certain aspects of his supervisorial areas.

Mine are more on a day-to-day basis. And I try to keep them from the executives and handle them myself.

When they get out of hand, they go higher.

They can be as basic as director problems with elements of the crew, as happened on Owen Marshall last season when we had two directors who were unable really to work with members of the camera department.

We have had occasion where actors are unhappy with scenes, or unhappy with their lack of scenes; sometimes an assistant director is unhappy because they can't reach actors because actors don't have telephones.

[333] And also, the constant problem areas of making a film.

Q All right.

And could you give me some examples of the type of specific problems that arise with respect to actors?

A Well, I think I just did. In one case, we have an actor who changes his phone number, and the assistant director was not advised.

And the assistant director tried to call him for an 8:00 call on a given morning and couldn't find him.

So what do you do when you can't find him after? You call the producer.

And I tried to settle that problem for future, and not only to find the actor, but to make sure that he indeed had an exchange, which most actors have in this town, and that kind of thing.

We have—one of our lead actors was unhappy with the amount of—the percentage, let's say, of scenes he had in certain given episodes.

I spent a great deal of time dealing with that—dealing with him, placating and explaining, and relating to that problem.

Q All right.

And do grievances ever arise with, say stunt men?

A Sometimes. They can arise with anybody. Our series is conceived so there is very little stunt work.

[334] I have been involved in the other kinds of series, not at Universal, and grievances are constantly arising with stunt men.

And the production manager is supposed to deal with that—with the stunt men.

And when he is unable to, he will ask our producer.

MR. GOLDMAN: Excuse me, your Honor.

I am going to have to object to the answer as being non-responsive to the question.

Number one, we are bringing in the aspect of the production manager, which I believe is in a different union altogether.

He is not even affiliated with the producer, assistant producer or executive producer.

And the answer doesn't relate to Owen Marshall as it was asked.

THE WITNESS: The question was—

JUDGE: Just a minute.

THE WITNESS: I am sorry.

JUDGE: Well, the question basically, as I remember it, or understood it, had to do with the function of the producer.

And I think the witness stated, if I am correct, Mr. Goldman, that if the production manager could not handle the grievance, that he next took it to the witness as a [335] producer.

And that would be the—this seems to me to be relevant.

MR. GOLDMAN: Well, you must look to what he said I think, sir, in the fact that he has been the producer here on this program for approximately two years.

He is talking about other employment elsewhere.

JUDGE: I'm going to overrule the objection.

The status of the producer generally in the industry as well as this particular producer, is a matter I am going to have to deal with.

It may be a matter of weight.

If it is a long time ago and in a different situation, then I might not give it any weight.

Go ahead, Mr. LeVine.

MR. LE VINE: I believe he answered the question.

Q (By Mr. LeVine) Do grievances ever arise with respect to writers, with respect to the determination of credits?

A On occasion.

Q And who makes the initial determination of credits?

A I believe—I don't recall a specific case of this in the last season, but I believe in a case like that, we put a name on the script that we, as a unit, feel is the name that belongs on this script, and that it goes to the Writers Guild.

[336] And then the Writers Guild mediates it just as a normal procedure.

I believe that is the way it works; I can't vouch for that.

Q All right.

And could you tell me who the unit is that you have referred to?

A The unit is usually myself, the story consultant and conceivably the executive producer.

• • • •

[339] Q (By Mr. Miller) Mr. Epstein, how long have you been a member of the Writers Guild?

A Around 15 years.

Q All right.

And when was the last time that you received a writing credit?

Do you recall?

A 1963.

• • • •

[340] MR KEATON: Excuse me. Not on whether he voted, but whether he was allowed to vote.

MR. GOLDMAN: I don't think that was the question.

JUDGE: The question, as I am putting it to the witness, is whether he voted on the adoption of the strike rules.

THE WITNESS: I did not, your Honor.

JUDGE: All right.

Mr. Miller, do you have a question?

MR. MILLER: Yes.

Q (By Mr. Miller) Is it your understanding that you would have been allowed to vote on the strike rules?

A It is my understanding that I would not have been allowed to vote on strike rules.

• • • •

[343] CROSS-EXAMINATION

Q (By Mr. Goldman) All right.

• • • •

[344] Q All right.

Now, you testified on direct that when you were producer in the past, that you had been involved in the problem of stunt men?

A On occasion.

Q Could you give us how long ago that occurred?

[345] A Yes.

I would say the bulk of it occurred around 1966-'67

when I was doing a series that was heavily involved with the stunts.

Q In which company were you doing it for?

A The Mirisch Company.

Q And that was "Rat Patrol," is that right?

A That is correct.

• • • •

JUDGE: Overruled.

THE WITNESS: I pay dues. I don't know how voluntarily it is.

As a member of the Guild, it is part of what I am committed to do. I never questioned it.

• • • •

[346] The objection is overruled.

THE WITNESS: I believe the question was: why do I maintain membership in the Writers Guild?

Q (By Mr. LeVine) Yes.

A Well, I have many reasons as to why. I have stated in my affidavit, but I would be happy to enlarge on it or put it into the record—

JUDGE: Now, Mr. Epstein, you were asked "why."

THE WITNESS: All right.

[347] I never knew I was able to get out. It was my impression that I was unable to get out, one, and secondly, I felt that there was a moral obligation that I had, because when I did the little bit of writing that I did 10 and more years ago, I did write for scales that had been arrived at and fought for by the Writers Guild in previous years.

And I felt that I had that kind of a moral obligation to maintain and continue to pay dues to an organization that had indeed fought for those scales.

And in addition to that, I saw no reason to get out, because I wanted to keep my opportunity—if I ever wanted to write again, to be able to write again.

I guess that answers it as far as I am concerned.

Q All right.

Now, I believe you said in your affidavit—and correct

me if I am wrong—"I wish to keep my options open if I should eventually either create a series or perform other work within the Writers Guild jurisdiction?"

A I think that is a fair statement.

You have it in front of you and I don't; so—

Q So that you would receive the remuneration that the Writers Guild negotiates for.

Is that correct?

A In those areas, yes.

• • • •

[349] Q Did you vote?

A No.

Q Did you attempt to vote, or did you just walk into the meeting and sit down?

A I did not vote.

Q All right.

Mr. Epstein, what does a story consultant do?

MR. LE VINE: Your Honor, I would object to that question.

I think it goes beyond the scope of the direct examination of this witness.

MR. GOLDMAN: Well—

JUDGE: The witness mentioned story consultant in his direct testimony.

MR. GOLDMAN: Not only that, your Honor, but we have his affidavit here, and—

JUDGE: Well, that may not be the answer. The reason I am overruling the objection is that it was opened up.

MR. GOLDMAN: Fine.

THE WITNESS: Story consultant works with writers, supervises the preparation of writing material, does rewrites [350] and polishes?

I can't speak for all, but I would assume that is generally a correct statement in all areas.

Q All right.

Now, in your affidavit I believe you stated that you when working with the executive story consultant, supervised his work—his work with writers?

A That is correct.

Q So you in turn supervised the executive story consultant?

A That is correct.

Q All right.

What is the manner of supervision that you engage in? What do you do?

A Generally I meet with the story consultant before he meets with the writer.

We have an exchange of ideas. And obviously at various stages of the development of a piece of material, whether it be an outline or a draft of a screenplay, we have an exchange of ideas.

I tell him what I feel is wrong with the piece. And I tell him in general how I feel it should go, and be corrected etcetera.

And we have in essence, to use a general term, a meeting for 20 minutes, in which he then goes and translates [351] into a meeting with the writer for two hours so that I am free to do other things.

If I am needed in the meeting, which is often the case, the story consultant calls me and asks me to participate in that dialogue.

Q All right.

Now, if I understand what takes place—and correct me if I am wrong—you have, as the producer, the initial blueprint, so to speak, of the—now, we are talking about a series, are we not?

A In my case, yes.

Q You have the initial blueprint of the series.

And it is your function to make sure that there is a continuity in the series, and as was testified to earlier, that the star doesn't become dead in one episode and resurrected in another.

This is the type of information that you supply to the executive story consultant.

Is that correct?

A No. It is much more specific than that.

Q All right.

A It generally has to do with the dramatic values in the script, and the bad dialogue in my judgment, because ultimately the buck has to stop somewhere, and I judge the material.

[352] And I deal with it for what it is and tell them what I think is wrong with it. And generally speaking, I make suggestions as to how to cure it.

Q To the executive story consultant?

A Yes.

Q Who, in turn, is delegated by you then to speak to the writers?

A That is correct.

Q All right.

Now, assuming you have a term writer who has handed in the script, and his term has expired—he is cut and paid for the script—and your story consultant now has it as a finished product?

How do you handle that problem, when there is a finding by you that the dialogue is bad?

A We have the same conversation—or a similar conversation that I had with the story consultant. And then the story consultant, who is under contract, does what we agree on.

Q All right.

And that would entail possibly rewriting part of the script?

A In varying degrees, I would say that is correct.

Q All right.

And when you don't have a term writer, or his term has [353] not expired, he can be asked to perform those functions?

A Within the structure of the regulations agreed with the Guild, yes.

Q Yes.

A Definitely.

Q All right.

How—other than what you have just described, in what manner and how does an executive story consultant supervise the creative part of the writing function of a writer?

A I think, to take it from the original steps, he has early meetings with the writer, and has an exchange of ideas that are eventually brought to the producer with a request to proceed.

And it is the producer's function to grant that request, deal with the material that he is talking about, or whatever—

Q Can you give us some examples of that?

A Suppose a writer comes in and talks to the executive story consulant, discusses an idea that they work with together?

They come into my office—

Q Now, at that point, the writer has already been hired, has he not?

A In some cases.

Q Or a deal made or a commitment made with the writer?

[354] A Yes, but not in every case. But often in cases, yes, and there is no—in other words, writers can come in and pitch ideas, as I understand—as I recall—without having a prior deal made.

They can pitch an idea and we can make a deal. That happens, too.

But to talk about your step; let's talk about an outline. They talk about an outline, they may exchange ideas, and when they are through exchanging ideas, they come to me and tell me what their recommendations are and how to proceed with the material at hand.

And maybe it differs from some of the things that I have talked about with the story consultant, and then we agree generally speaking.

Q All right.

Now, let's assume that you have that first step, where you have the story consultant talking to the writers.

The story consultant is talking to the writer, and his initials talks to him are based on outlines set forth by you as to what you want to have in the series?

A Based on general formulas, yes.

Q Based on general formulas?

A Yes.

Q All right.

And then he gets together with the writer and describes [355] these general formulas to that writer, and then the writer takes it from there and tries to create something within the framework of that general formula.

Is that correct?

A Not exactly, but more exactly, the writers are generally well informed about what the intent is of the series before they come in; so that that initial meeting that you have described "go out and come back" doesn't always take place.

Sometimes a writer can come in and say, "What do you want in the series?"

And they have that conversation. And then he goes out and comes back with some ideas.

Q All right.

Now, when he comes back with some ideas, who does he come back to?

A He comes back, generally speaking—and this is in my series and I don't know that every series works that way—

Q Yes.

A —he comes to the executive story consultant.

Q And what happens at that point?

A They exchange ideas, sometimes for 10 minutes and sometimes for two hours.

And then they come to me and pitch what they have settled on. Often I agree with them.

[356] I then go to my executive producer.

• • • •

[360] Q All right.

Now, once you have the script, what happens? Now, the writer has been paid for his services, and he could be doing something else, what happens?

A I believe there is a period of time where we get back to the writer, and we are entitled to a revision.

So that step takes place.

Q All right.

A And that is always as a result of an exchange of ideas between me and the story consultant.

When the writer finally turns that revision in, and is paid off, and whether it be in one check or two checks, I don't know, but he is paid off and his work is essentially [361] finished, I would say.

And any changes that we want to make are made by the story consultant on staff.

• • • •

[REDIRECT EXAMINATION]

[367] Q (By Mr. Keaton) Did you attend this meeting at the Guild's offices or the board room on February 15th, 1973?

A Yes.

Q All right.

How many people approximately were there if you recall?

A I would say somewhere in the vicinity of 100 to 130 or 40, something like that.

Q Do you know many of them?

A Yes.

Q What kind of capacities did these people hold in their employment, if you know?

A I would say mostly in producer/writer capacity.

Q Were there some director-writers there also whom you knew?

• • • •

[369] Q Who presided at that meeting, if anyone?

[370] A Well, I never got the impression that any specific individual presided as I recall it.

Q Were any officials of the Guild present whom you know?

A Yes. There was Guild representation. I don't know Mr. Franklin, but if that was Mr. Franklin who was sitting next to Mr. Goldman—

Q You mean earlier this morning?

A Yes.

Q That was Mr. Franklin.

A Then I would say that he was there. And I believe that was the meeting that Mr. Hackler attended to answer any questions of—that were asked by the hyphenates—that were anticipated of being asked by the hyphenates in terms of jurisdiction.

• • • •

[371] Q All right.

Now, this was not the meeting at which the strike rules were voted on.

Is that right—none of these you have now described?

A No. I don't think the strike rules were voted at anything other than the general membership meeting of the Writers Guild.

• • • •

[375] Q (By Mr. Keaton) Was anything said by Mr. Franklin at that meeting, if you recall, concerning whether or not the proposed strike rules would be applicable to producers or directors?

A I believe the answer to that is yes there were; the meetings begin to run together in my mind in terms of the general membership meeting and that meeting.

I would have to say in answer to your question, the best of my recollection, yes.

Q All right.

And was anything said about whether the strike rules would be applicable to the persons—the hyphenate persons [376] at the meeting—only in their writing capacities or any capacity in which they might be serving for the struck employers?

A At all times when that subject came up in all of the meetings, it was made very clear by the members of the Guild Board that attended that all writers in any capacity were prohibited from crossing lines and going to work in any capacity.

Q All right.

And the persons who made these statements, you said, were members of the Board.

Can you identify some of them by name?

A I know that Michael Franklin made that statement. I believe there were others that made it; I'm certain there were others that made it whose identity I didn't know.

• • • •

[385] Mr. LeVine, you have to develop that through testimony.

Whereupon,

MELVIN SATTLER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

• • • •

[389] And that writer will go to work following the concept that the producer has given him along the lines that he wants that script written.

And will work very closely with that writer.

And depending upon the producer and the writer, and the personalities involved, that writer may write in the producer's office—an office alongside—and be in constant consultation or he may deliver so many pages.

And then they will be in constant consultation with each other until development of that script reaches its climax in accordance with the arrangements that they have made.

If they made an arrangement for a treatment, the treatment will be delivered, the producer will go over it, and if he is satisfied with it, and wants to take the next step with that writer, he will sit down and discuss the matter with the writer, what direction he wants him to go and ask the writer to proceed along those lines in connection with creating the first draft screen play or final screen play, depending upon the situation.

• • • •

[390] Also, in the meanwhile, he will have to be thinking about a director. And he will interview directors that he thinks that he would like to have direct this project.

And he will finally come across a director who in concept agrees with the producers concept, or they may come together and amalgamate both their concepts.

He hires the director. He will supervise the directors' activities up to a particular point.

He will consult with the director and business executives that are involved with respect to casting, all within the budget, of course.

I mean, the producer had to have his script budgeted, and [391] he would work very closely with the Budgeting Department as to cost of the picture and whether or not it was feasible.

And in the event the budget is slightly high, and he didn't intend to make a picture at that price, he may go back to the writer and ask the writer to make certain revisions and changes with respect to scenes that will either cut down the cost of the picture or, maybe, that could be eliminated.

• • • •

[392] You have to select music, hire the composer, have the picture underscored, and actually bring the picture to the point where it can be ready for release.

In the meantime, he is also in consultation with the advertising and publicity department.

This is on a consultation basis, where he is giving the advertising and publicity department his views and his thought in connection with how the picture should be advertised.

And the advertising department will bring him sets of ads for his suggestion and sometimes approval.

And, basically, that is what a producer does. He is instrumental in hiring personnel that is involved, and if necessary, causing their discharge or discharging them.

Q All right.

You mentioned in your testimony that the producer will [393] deal with certain problems that arise in the production of the film.

Could you describe the types of problems that arise from your personal knowledge?

A From my personal knowledge? Well, just recently, I won't give you the name of the photoplay or the name of the individual—but the director notified the producer that he was very unhappy with the cameraman that had been hired on this particular picture.

He wasn't getting what he needed in connection with his concept and with respect to the type of shots that he wanted, and the type of staging that he wanted from the camera angle.

And he stated that he was very unhappy and wanted to consult with the producer about it in order to satisfy and alleviate the problem and replace the cameraman.

And we did eventually get what we wanted. That is one of the problems.

If a picture should be going over budget, that would be the biggest concern probably to the producer; as he is directly responsible to the business front office.

And he is going to find out why that picture is going over budget and what can be done about it. And obviously if it's going over budget, it could be because they are going over schedule, and he would find out what the reason for going [394] over schedule is because going over schedule is money.

Or if there is some—or if there is not a harmonious cohesive working crew and element going on along with the actors and directors and any other matter that can be occurring on the stage that can be holding up the situation.

• • • •

[395] Q All right.

Now, could I ask you if the director will recommend that any type of person be hired?

A Yes, generally—and I might say more than just generally.

In most of the cases a director will have a certain cameraman he would like to work with. And he will recommend that this cameraman be hired.

And his recommendation will—unless the cameraman's deal at that time is so outrageous that it wouldn't fit the budget—but assuming that it fits the budget, that cameraman will be employed because of his recommendation.

Q Do problems arise on the actual set in the shooting of the film?

A Oh, yes. Actors can blow their lines or become temperamental.

[396] And a director is quite instrumental from a psychological standpoint of putting the actors in the proper mood, keeping them in a state where they can perform their duties as they should.

And if these problems come up, the director will probably be the first one to try to settle that matter and to placate the individual.

If he can't or if he needs help, he will go to the producer, and he will give him help.

From a technical standpoint, problems will arise with respect to either his key grip or his cameraman, or his

—any other person who is handling the function in connection with the production, then the director will immediately step in and probably instruct his first assistant either to have that man do it "this way," or if he can't, to replace him.

• • • •

[397] MR. LE VINE: Our next witness, your Honor, is Herman Saunders.

Whereupon,

HERMAN SAUNDERS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[399] Q And what are your duties as an executive producer?

A Supervising all areas of the producing or the production of Adam 12, and naturally a little bit above the actual producing chores because I am a producer.

Q All right.

And could you tell me specifically what you do?

A Checking the scripts, the ideas for the scripts, and when in production, all phases of the production.

I naturally am told by the producer whom he has in mind for writers, directors, crew, cast and everything which has to do with the production.

And then I also get very strongly into the post-production areas.

And I carry it to its extreme finish.

Q All right.

When your producer tells you he would like to hire as a writer or a director, or crew, who makes the decision as to whether or not that person would be hired?

A I do.

Q All right.

Do problems arise in the production of Adam 12?

A Frequently.

Q And as part of your duties, do you resolve those problems?

A Whenever possible.

[400] Q Do problems arise with respect to employees who are working under you in Adam 12?

A Yes.

Q Do grievances arise with respect to the employees?

A Yes.

Q All right.

Could you describe the type of grievances that come to your attention?

A Anything which has to do with a problem on the set will eventually get to me.

One of the first—one that was brought up today, as I remember, was problems between directors and cameramen; and that is one of the often found problems.

It can be something even when an extra feels that he is being underpaid for a particular piece of work that he has done and demands extra compensation.

And that will eventually get to me.

Conflicts such as an art director having his set completed to his satisfaction and then feeling that the set decorator hasn't done a good job on the set, and coming to me and saying, "We have got to get this straightened out."

Q Do problems arise with actors with grievances?

A Yes.

Q All right.

[401] Can you give us an example?

A It can be actors not liking what they are doing in terms of action.

They may not like what the director is telling them to do.

And we have a technical advisor—a sergeant from the Los Angeles Police Department. And it may be something that is inconsequential as his telling them they must wear their caps while they are running after a suspect.

Q All right.

And do actors ever complain about their dressing rooms?

A Oh, often. That is indigenous—

Q And would that problem come to you?

A Yes, it does, and it did.

Q And can you tell us of that specifically?

A Yes. We have two stars in our production with equal filling and equal talent, shall we say, and one by the luck of the draw, had, say, a very good dressing room and one had a lesser dressing room.

And after a period of time, it became an abrasive area and I had to get in very strongly with "to tower" as we say—the men upstairs.

And it was finally adjudicated that they both have the same size and type of dressing room.

[402] MR. LE VINE: I would like to have this marked as General Counsel's Exhibit next in order.

(The document above-referred to was marked General Counsel's Exhibit No. 6 for identification.)

Q (By Mr. LeVine) All right.

Now, Mr. Saunders, I am going to show you what has been marked as General Counsel's Exhibit No. 6.

Did you receive any communications from the Writers Guild of America on or about April 14th or 15th, 1973?

A Yes.

Q All right.

I'm going to show you General Counsel Exhibit 6, which purports to be a notice of disciplinary hearing and charges which were sent on April the 14th, 1973 and is signed by John Mendonsa, resident counsel of the Guild; I will ask you if you received a copy of this.

A Yes, I did.

MR. LE VINE: Your Honor, we offer into evidence, General Counsel's Exhibit 6, a notice of disciplinary hearing and charges that were sent to Mr. Saunders.

JUDGE: Any objections?

MR. GOLDMAN: No objections.

MR. FISHER: No objections, your Honor.

MR. KEATON: No objections, your Honor.

[403] JUDGE: General Counsel's Exhibit 6 is received.

(The document above-referred to marked General Counsel's Exhibit No. 6 for identification, was received into evidence.)

Q (By Mr. LeVine) All right.

You are a member of the Writer's Guild?

A Yes.

MR. LE VINE: That's all the questions I have of this witness, your Honor.

JUDGE: Mr. Keaton?

MR. KEATON: I would like to offer a stipulation that Mr. Saunders' case was tried by a tribunal of the Writers' Guild yesterday, May 23rd—

A I believe it was Tuesday.

MR. KEATON: May the 22nd; I stand corrected.

JUDGE: Mr. Goldman?

MR. GOLDMAN: I don't know when it was. If you tell me it was, Harry, I will stipulate.

MR. MILLER: I will represent on behalf of our firm which represented Mr. Saunders that the hearing—that his trial was held before a Guild trial committee on Tuesday, May 22nd, 1973.

JUDGE: It is my understanding that on your representation, Mr. Goldman is willing to stipulate.

Is that correct?

[404] MR. GOLDMAN: Yes.

JUDGE: Mr. Fisher, any objections?

MR. FISHER: No objections.

JUDGE: Mr. LeVine?

MR. LE VINE: No objections.

JUDGE: All right.

The stipulation is received.

MR. KEATON: I would like to have this marked as the next exhibit in order, a letter dated January 22nd, 1973, to the Writers Guild of America West from Herman S. Saunders.

And that would be Association-2, I believe.

(The document above-referred to was marked Association Exhibit No. 2 for identification.)

MR. KEATON: And I would like to have marked as Association 3, a letter dated January 30th from the

Writers Guild of America West, Inc., to Mr. Herman Saunders.

(The document above-referred to was marked Association Exhibit No. 3 for identification.)

MR. KEATON: At this point, I am just identifying the documents.

Q (By Mr. Keaton) Mr. Saunders, I show you what has been marked as Respondent's Exhibit 2—this is a Xerox copy—and is that your signature?

A Yes, it is.

[405] Q And did you send that letter to the Writers Guild at about the time that it bears?

A Yes.

Q All right.

I would like to show you next Association 3, which is a Xerox copy of the letter which you received in response?

A Yes.

MR. KEATON: I would like to now offer Association Exhibits 2 and 3 in evidence.

JUDGE: Any objections?

MR. GOLDMAN: Yes.

I don't see the relevancy.

MR. KEATON: The relevance is that these letters reflect that Mr. Saunders attempted to resign from the Writers Guild by a letter of January 22nd which was well before the strike, and got a response in which the Guild told him that he couldn't resign because they were about to go into negotiations.

And that the Board had voted his membership shall continue in the Guild for at least during the period in which the negotiations are being conducted, plus an additional six months thereafter.

And he was told that if he wanted to again tender his resignation after the completion of the negotiations, but prior to the expiration of the six-month period, he should feel [406] free to do so, and they would again consider it.

I think that is highly relevant to the issues in this case.

JUDGE: I think it is relevant, Mr. Goldman.

Any other objections?

MR. GOLDMAN: You have decided.

JUDGE: All right.

The objection is overruled and Association Exhibits 2 and 3 are received.

(The documents above-referred to marked Association Exhibits Nos. 2 and 3 for identification, were received into evidence.)

JUDGE: You gentlemen are all experienced attorneys and realize merely because I rule that a document is relevant that does not mean that I am going to find that it has a material bearing on the final decision.

Anything else?

MR. KEATON: I would like to just clarify something.

On the bottom of this document, it says, "Exhibit A," and "Exhibit B."

Please disregard that. That is not part of my offer.

JUDGE: All right.

MR. KEATON: These are copies from an affidavit.

JUDGE: All right.

MR. KEATON: I have no further questions.

[407] JUDGE: Mr. Fisher?

MR. FISHER: I have no questions.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Did Mr. Saunders give an affidavit?

MR. LE VINE: Yes, he did.

I was just going to get it for you.

MR. GOLDMAN: May I have a couple of minutes?

JUDGE: That one looks like you might take two minutes.

MR. GOLDMAN: Well, it's only about a page and a half. I don't really need that long.

JUDGE: All right.

We will be in recess until 20 after, in any event. That will give you a couple of minutes.

MR. GOLDMAN: All right.

(Short recess.)

JUDGE: On the record.

Mr. Goldman, you can proceed.

CROSS-EXAMINATION

Q (By Mr. Goldman) Mr. Saunders, you are executive producer for Adam 12.

Is that correct?

A Yes.

Q Does the name Mark VII Productions or Mark VII, Ltd. have any significance to you?

A Yes, it does.

[408] Q Are you familiar with that?

A Yes.

Q All right.

Is it not true that Mark VII produces Adam 12?

A Mark VII, Ltd. is the owner of but not the actual producer in terms of production.

Q Mark VII, Ltd. is the actual owner of the Adam 12 series?

A Mark VII, Ltd. and Universal Studios; it is a co-production, as I understand.

Q All right.

And you are not fully knowledgeable of the relationship between Mark VII and Universal concerning Adam 12; are you?

A No; I have not seen the contracts.

Q Are you on the staff of Mark VII?

A I am under contract to Universal Studios.

Q To Universal Studios?

A Yes.

Q All right.

Is Mr. Jack Webb your supervisor?

A He is the owner of Mark VII, Ltd. And when there is a problem that gets to the point, I feel he should be brought in, yes.

Q Could he remove you off that show?

[409] A Yes, I think so.

Q As well as the actors, cameramen, directors, other producers?

A If he felt that someone was malfunctioning or someone was unable to do their job, he would tell me, and in all probability, something would happen.

Q All right.

And I take it you have been a member of the Writers Guild of America West for some time, have you not?

A Around four years, I would hazard a guess.

Q You have been a member of the Writers Guild for four years?

A Yes.

Q All right.

And what prompted your admission into the Writers Guild?

A I had co-written and co-created a property for Universal Studios.

Q Which property was that?

A It was a comedy—half-hour comedy by the title "Over There."

Q And on the basis of this co-writing and co-creation, you became a member of the Writers Guild?

A Some time after I did that, yes.

Q Approximately how long ago was it?

[410] A I would say—I wrote it in '67 and I joined the Guild around '69.

Q Was "Over There" ever produced?

A No. I'm really sorry.

Q Well, I don't watch television.

Since "Over There" have you done any creative writing in the television or theatrical motion picture area?

A No.

• • • •

[416] JUDGE: Mr. Le Vine, do you have another witness?

MR. LE VINE: Yes, I do, your Honor.

I will call Mr. Swerling.

Whereupon,

JO SWERLING, JR.

was called as a witness by and on behalf of the General Counsel and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[418] Q All right.

Could you go into some detail as to the types of duties that you perform?

A Well, chronologically the effort begins with the selection of the stories and the writers, the development —the supervision of the development of the stories until the story is satisfactory.

Once a story is approved, the supervision of the development of that story through the various drafts of teleplay—script.

Once the script is approved, the producer supervises all aspects of pre-production which includes the hiring of the director, the supervision of all of the director's activities and the preparation, which includes casting, wardrobe, selection of sets, selection of locations, special effects, make-up—if there is any special nature to the make-up, selection of music that might be needed on the set during the filming, and preparation of the budget.

And that also includes seeing to it that the script—the changes are made in the script to accommodate the budget.

And once everything has been done and you are ready to start shooting the producer has—supervises all aspects of the shooting, which includes the viewing of the dailies, which is the film shot the day before.

[419] And requesting additional shots, changes, reshooting, depending on his views of the dailies.

And resolving problems which are endless. It includes making sure that the director adheres to the schedule.

Once the show is finished shooting, we supervise very closely the editing of the picture through various evolutions.

We supervise other aspects of close production such as sound effects, underscoring, music. We select the composer and give the composer our views as to what kind of music we would like to hear.

We supervise the scoring session if time permits. And when the music is actually recorded, we supervise the

dubbing sessions—all of the music and sound effects and group dialogue, so forth and so on, incorporated into one sound track.

The last major creative evolution of the production is this.

And then when the film comes back from the lab in composite form, it is our responsibility to check it to make sure that no errors have been made in the negative cutting or that the color is right, and the print is substantially of broadcast quality.

And then it is shipped to the network, and we go on to the next one.

[420] Q All right.

Do grievances arise with respect to the production of television series films?

A Yes. Quite frequently.

Q All right.

Could you tell me the type of grievances that arise?

A The most frequent—the grievances most frequently stem from the star of a television series. I'd say that 95 percent of your grievances and 95 percent of your time resolving grievances, relate to the star.

And they get temperamental. They don't like a script, they don't like a scene, don't like the dialogue and don't like the way it is staged.

They have conflicts with the director, and they sometimes have conflicts with the cameramen. And they have conflicts with other stars—their co-stars in a series.

And they have conflicts with guest stars. And most frequently—occasionally the director will attempt to resolve these grievances.

But most frequently, he is unable to. And they come up to the producer who has to resolve the differences.

And he has to approve of the changes which he may agree with. In other words, if an actor has a grievance about a scene, it may be valid—frequently is—and then the problem comes up "how do we change it?"

[421] And it is the producer's function to consult with the actor and the director on proposed changes and to approve it.

Q All right.

Could you give us a specific example of the types of grievances that you would resolve?

A Well, along the lines I have been describing, if an actor objects to a line of dialogue, it is the understanding with every director that works with me, that no changes will be made in the dialogue without my authority.

And so, I will get a phone call and I will go down to the set and listen to the actor's complaint about the line of dialogue.

If I think he is right, I will be open to suggestions from the director or the actor, or I will have an idea myself as to how to change the line so it doesn't lose its meaning, and so that it is more comfortable for the actor to say.

Or I will have to persuade the actor that there isn't a better line than that, and he had better read it the way it is written.

Q All right.

And do grievances ever arise with respect to assignment of dressing rooms?

A Yes. That is a common grievance, particularly when there is more than one star involved; because they want equal treatment.

[422] This doesn't necessarily mean that you have to have two co-stars on a given show.

If you have a star of series, "A" and he finds out that a star of Series "B", which is also being filmed at Universal, has a more luxurious facility, he will want equal treatment.

And it is difficult to do because they have a limited amount of dressing room facilities; and they vary.

So it is a difficult logistical problem for people at the studio or directly in charge of dressing room facilities.

And the actor needs a spokesman, and that is always the producer.

He will complain to the producer, who will then attempt to put pressure on the people who have direct control of the facilities to accommodate him.

And we always try to do that because we like to have the actors happy.

Q All right.

Do any other types of grievances arise other than dressing rooms and objections to lines?

A Yes. I had a situation last season where an actor was convinced that a set had been improperly constructed in order to achieve a certain special effect that we were trying to create.

And he left the set and locked himself in his dressing [423] until we built an entire villa in effect, instead of a portion of a ceiling.

And I had to spend about an hour of my time explaining to him that there were a great many people who were qualified experts in how to achieve movie magic; and that his specific job was to act in the picture.

And if he would please have faith, that the people who are experts knew what they were doing, and if he would concentrate on learning his lines, which he wasn't accustomed to doing, prior to coming to work that we all might be better off, and we could get the job done.

And ultimately my persuasion worked. And he went back and we shot the scene and it was very effective and worked exactly as the special effects people, the director, the cameraman and myself had planned.

• • • •

[426] Q And when was the last time that you were employed as a writer in the motion picture television industry?

A Well, I would have to say that the last time that I filled out a contract for services as a writer was earlier this year; in February I would guess.

Q And when was—

A The nature of the employment was a polish on a pilot script that we were preparing for production called "Toma."

• • • •

[CROSS EXAMINATION]

[432] Q (By Mr. Goldman) Have you written any scripts or done any polishes for Toma since the inception of the strike?

A No.

• • • •

[REDIRECT EXAMINATION]

[434] Q (By Mr. Keaton) Mr. Swerling, to date, has anyone in the Management of Universal since March 5, asked you to perform any writing services?

A No, sir.

• • • •

[436] Whereupon,

STEPHEN HEILPERN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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[438] Q All right.

Could you describe your duties as an associate producer?

A Yes. In our particular production unit, our duties overlap; consequently, I am involved in all areas of pre-[439] production, production and post-production.

I sit in on story conferences when the story to the scripts are developed.

I help criticize the drafting of scripts as they come in. And when they finally have what is called the "shooting script," I help supervise the director.

I also help decide who the director is going to be. My advice is very often taken.

And with the director, we help look for sets, pick locations, pick wardrobes, different make-up problems, and we are very much—I very much am involved in casting—all phases of pre-production.

And once the show goes into production, I try to be on the set as often as possible to supervise anything that may happen there.

Very often there are disputes. And if I happen to be on the set, I will attempt to settle or arbitrate the dispute.

As an example, one of the lawyer segments of "The Bold Ones," one of the actors asked that a prop not written in the script be included.

It happened to be a dress that the actor's wife had bought.

And being very familiar with the script, I thought that it was wrong for her character and his character.

[440] So I—the director could not win the argument. I had to.

I might add, you know, that a director is usually higher on a free-lance basis, whereas the producer and the associate producer, we are responsible for the entire creative content of the series.

So very often a director asks us to mediate or make a decision.

Another good example might be that actors very often will come to a set—let's say they are supposed to be a L.A. policeman; and an actor reports to the set with hair longer than mine.

We try to be factual. L.A. policemen do not have hair as long as mine.

And the actor is asked to submit to a haircut.

And if he doesn't, of course, we have to replace him. And a director is very often too busy involved in getting the show out on schedule that sometimes he will miss things like that.

And that is why one of us tries to be on the set.

These things come up all the time. I won't bother to corroborate what Mr. Swerling state previously, but there are many problems with especially the star of the series.

Now, getting on to post-production. I am involved in post-production in cutting and dubbing and looping of the [441] actors.

That is primarily my responsibility.

Looping is re-recording their voices.

Very often the lead in a series will object when I ask him to read a line differently in looping.

I have to hopefully win the argument.

• • • •

[442] Q All right.

And how long have you been a member?

A Almost two years.

Q Did you receive the strike rules?

A Yes, I did.

Q All right.

MR. LE VINE: I have no further questions of this witness, your Honor.

• • • •

[446] THE WITNESS: Another statement made I believe, by Mr. Frankline, was that if a producer or an associate producer or an executive producer only had to dub a show to finish completion of his services on the show, he could not cross the picket line to do that once the strike started.

Q (By Mr. Keaton) Even though he would be doing no writing whatever?

A Yes, because that question was asked—one producer [447] would ask about editing and another producer would ask about another phase of production, having nothing to do with writing.

And the answer was always very simple: "If you are a member of the Writers Guild, you cannot cross the picket line."

Q Including that symbolic picket line?

A Including the symbolic picket line.

MR. KEATON: That's all I have.

JUDGE: Mr. Fisher?

MR. FISHER: No questions.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Yes, sir.

CROSS-EXAMINATION

Q (By Mr. Goldman) You say you became a member of the Writers Guild two years ago?

A Yes.

Q What prompted you to become a member of the Writers Guild?

A I performed rewrite services on an episode of "The Bold Ones," and for which a single picture contract was executed by me.

And even though I didn't have to join at the time because of the Taft-Hartley Act, I felt I would be doing more rewriting services, so I did join at the time.

Q All right.

[448] And did you do more rewriting services?

A Yes. Subsequently I have done two more rewrites and a polish.

MR. GOLDMAN: May I have Mr. Heilpern's affidavit?

MR. LE VINE: Yes.

MR. GOLDMAN: Let the record show I am handing the affidavit back to General Counsel.

• • • •

[455] Mr. LeVine, are you ready to proceed?

MR. LE VINE: Yes.

We will call Mr. Dave Freedman.

Whereupon,

DAVID FREEDMAN

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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[461] Q (By Mr. LeVine) All right.

Could you tell me what authority, if any, does the executive producer have with respect to hiring of employees?

[462] A He has a great deal of authority. It is his shared but almost unchallenged authority to do the hiring and firing of the above-the-line people.

Q Who would he hire?

A Writers, actors, directors, in many instances the producer, story editor.

Q All right.

What authority, if any, does the producer have with respect to the hiring of employees?

A He shares that authority except in the most important areas.

He could hire or fire without the approval of the executive producer being specifically sought.

• • • •

[467] Q (By Mr. LeVine) What authority, if any,

does the director have with respect to the adjustment of grievances?

A He has a great deal of authority in that instance, because these—there are all types of grievances; they come up on the spur of the moment, they sometimes are meaningful and they are sometimes minor.

He has a rigid schedule to follow or else it will involve the expenditure of a great deal more money due to the delay.

He will make on the spot solutions.

• • • •

[469] Q (By Mr. LeVine) What is the name of the function at Paramount?

A There are several names to the function, each having slightly different interpretations of duties.

We hire executive script consultants; we hire story editors; we hire executive story editors.

Do you want me to describe the functions in the different titles?

Q Yes, please do.

A Executive story consultants sometimes do the same thing as a story editor, depending upon the deal that is negotiated with them up front.

If they are exclusive to the television series, they will do the functions that a story editor normally does; which I will describe in a moment.

If they are executive story consultants on a non-exclusive basis—that is, they may be working on another series in another studio elsewhere, or developing a script elsewhere, where the services are not exclusive to that series, they are in a more pure consultant capacity.

Now, the consultant will read first drafts and completed [470] scripts.

They will see the rushes of the individual episodes. They will attend screening for network executives. They will attend rough cut screenings.

They will be used almost in a story executive producer basis as a—as would a non-exclusive consultant in other industries.

A story editor and/or executive story editor on an exclusive basis, will devote full time to his duties in connection with that particular series.

And his function would be to secure writers, listen to writers read story lines, suggest to writers who are employed the direction to take in this particular script, or because of this particular series has this particular long-range objective, and he maintains the integrity of the continuing character he works with writers from the beginning stage to the final stage when the script is ready for production.

And he does some rewriting—polishing—of his own.

Q All right.

What authority, if any, does the story editor, executive story editor, function have with respect to the hiring of employees?

A He is able to hire writers, assign projects on his own, and he usually confers with the producer and/or the [471] executive producer, recommending that it be hired.

But he can commit.

Q What authority, if any, does the story editor or the executive story editor have with respect to the adjustment of grievances?

A That woud be only that I can think of in terms of writing credit, ameliorating writers' feelings when things have to be rewritten, and the writer cannot grasp the reason for rewriting it.

He can exert influence in the settling of those grievances.

Q All right.

What authority, if any, does the executive story consultant have with respect to the hiring of the writers or the hiring of any employees?

A If the executive story consultant were on an exclusive basis to the studio, in devoting his full time to the series he would have greater authority in that area.

He also has the authority even though not on an exclusive basis, for bringing writers to the series, hiring them to do the series, and working under the working story editor if there isn't a working story editor per se under the producer.

He would use great influence in securing the best writers particularly suited to this particular kind of a series—the one he is working on.

• • • •

[484] Q What company did he have? Do you know the the name of his company?

A I don't remember the name of his company.

Q All right.

Now, this was a company that Paramount Television had an agreement with, and his company or that company —loaned out the services of Mr. Levy to Paramount Television?

A Yes.

Q Is that what you are referring to as the typical loan-out agreement?

A Yes. Where the services of the individual—

Q The services of the individual?

A —are of the essence to the agreement.

Q With respect to Mr. Levy's—your company's arrangement with Mr. Levy's company, was there an arrangement which included [485] the function of writing?

A Yes.

Q All right.

Let's go to Ivan Goff.

Is Mr. Goff—does he have a direct contract of employment with Paramount Television, or does he—is he employed by a company which is lent to you?

A I don't know that offhand.

Q Ben Roberts?

A I don't know that either.

Q Paul Playdon?

A His agreement with us, I believe—I'm not sure--is direct services.

Q Direct service contract?

A I beleive so. I'm not absolutely sure.

Q Is part of that contract that he has with you—does it cover writing services and functions?

A Yes.

Q All right.

How about Jerry Ranow? Is that a direct contract with you, or a loan-out arrangement?

A Again, I believe that is a direct services agreement.

Q And in this direct services agreement, was there some writing function included in that?

A Yes, there is.

[486] Q How about Craig Srangis?

A Yes.

Q Direct services contract?

A I believe so, yes.

Q And part of that direct service contract would have included in it, writing functions?

A Yes.

Q How about Ed Scharlach? Is that a direct services contract?

A I don't know.

Q It would be either a direct service contract or one of those loan-out contracts?

A I don't know which one it is.

Q All right.

Would you know whatever it was, that it required him to perform some writing functions?

A Yes, that I know.

Q And when we are talking about writing functions, we are talking about polishes, touch-ups and those functions other than the A through H function.

Do you understand that, sir?

A Yes.

Q And your answer is "yes," that is what we are talking about when we are talking about writing functions?

A Yes.

[487] Q How about Bernie Orenstein? Is that a direct service contract or a loan-out?

A I believe that is a loan-out—well, let me amend that.

One of those two, either Turtletaub or Orenstein, is a direct services.

The other one—and I don't know which the other one is—I believe the company is supplying the services.

Q All right.

Now, you said that you are considering them to be employed by Paramount Television.

Is that correct?

A Yes.

Q But their services are to be performed in the future?

A Yes.

Q All right.

And when you say their services are to be performed in the future, is it the fact that they do not want to cross the picket line the reason why their services are not being performed—

MR. LE VINE: Objection, your Honor.

That is completely speculative.

MR. GOLDMAN: Well, unless he knows—

MR. KEATON: It is irrelevant and immaterial. And furthermore, it is designed simply for the Guild to discover who is working in order to be able to sanction a few—

[488] MR. GOLDMAN: Well, we don't have to discover who is working.

Mr. Orenstein is an ardent supporter of the strike.

I think I am entitled to know from this gentleman. And it goes to our very issue in the Ninth Circuit case, that in the course of a strike, can a union threaten discipline of its supervisors crossing the picket line?

And the question is whether or not these people are doing it on their own, or they are threatened.

We want testimony of a number of these people that they are on their own not wanting to cross the picket line.

MR. KEATON: Your Honor, we haven't seen the Ninth Circuit case yet, but the description that I have of the case—I don't think Mr. Goldman has seen it either—but the description I got in this office based upon a phone call was that the case simpy holds that a supervisor who voluntarily belongs in a labor organization, can be disciplined under the circumstances of that particular case.

Now, none of us have looked at the board decision. It is at ITU case.

And the evidence shows already that the people who belong to the Guild do not belong voluntarily.

A man that tried to withdraw was not allowed to.

And I don't think we should be permitting the Respondent here to engage in a fishing expedition as to who is working[489] and as to who isn't working.

If Mr. Orenstein is in support of the strike. I suppose counsel for the Guild can put him on the stand and have him so testify, and we duly object.

JUDGE: Mr. Keaton

MR. GOLDMAN: Your Honor—

JUDGE: Just a moment, please.

I am not going to rule in respect to any other person or any other situation.

But in this particular situation, the witness has already testified on direct with respect to the employment status of these two gentlemen.

I put it that generally.

He stated what the conditions of their employment were, and when they were likely to start work and the reasons they were likely to start work.

Now I have to permit Respondent's counsel to test that testimony.

And that apparently is what he is doing.

Mr. Goldman, I would appreciate it if you would repeat your question.

MR. GOLDMAN: Yes. sir.

Q (by Mr. Goldman) Mr. Freedman, you stated that as to Mr. Orenstein, and Mr. Turtletaub, you considered them to be employed by Paramount Television; however, their employment—

[490] strike "employment"—however, they were not actually doing anything because the project they were employed for has not commenced.

It is to commence some time in the future; is that correct?

A That is correct.

Q All right.

Now, is one of the reasons for the projects not starting at this point in time because Mr. Orenstein and Mr. Turtletaub are honoring the picket line?

MR. KEATON: I renew my objection.

JUDGE: Mr. Freedman, would you go out that door, there where you can't hear what I am getting ready to say, and we will call you in certainly not more than two or three minutes.

(Witness excused.)

JUDGE: All right.

Now, Mr. Goldman, my problem runs as follows: it may well be that this company is delaying the start of many projects, including this one, because of the strike.

And I would be inclined to think that that might be a legitimate question.

The problem I have is that you are putting it in terms of these two particular people; and I consider that those two situations are entirely different.

[491] And I am going to sustain the objection of General Counsel and the Charging Party to your question.

But I want it to be done in terms so you understand. why. And I didn't want it so the witness could hear.

I am not precluding you from going into the reasons why—if it is a fact, and I don't know it is a fact yet—that Paramount may be delaying the project.

But I can't see any reason for permitting you to ask whether it is because these two people may be on strike.

MR. GOLDMAN: Fine, your Honor.

I will accept that.

JUDGE: I would say two other things: you see, these two men so far as I know, as of the time of the strike, started were not performing services for this company.

So, as to this company, there is substantial issue as to whether these two men are on strike against this company.

And the company may be delaying putting that problem to the test by not asking them. But that is different.

That in my mind, indicates that the company was just not going ahead because the strike was in existence.

MR. KEATON: Your Honor, may I ask one question?

I, of course, will have to accept your ruling, but in what way is it possibly relevant to this proceeding whether Paramount or any other studio is delaying a project by virtue of the strike?

[492] JUDGE: Mr. Keaton, I have already told you that as a general rule, I might agree with you.

The problem is that the witness on direct examination, said these two men are under contract, and the reason they haven't done any work for Paramount is that the project for which they have been contracted, has not started.

Now, once he said that, Respondent may within certain limits ask, "Why hasn't the project started?"

MR. KEATON: Your Honor, I think there is a misapprehension.

There are many projects in the motion picture industry that would not have started on February 1, which has absolutely nothing to do with this strike.

And the mere fact that he said he hasn't started on February 1, does not show that General Counsel opened up the question whether the strike delayed it.

The fact of the matter is until the networks select product, there are quite a few things that don't get started in this business.

JUDGE: Mr. Keaton, I think this argument is not getting us very far.

The chances are fairly good that when the witness was asked, he will say—he might very well say, "The project hasn't started because we are not ready."

I don't know what he is going to say.

[493] Will someone call the witness back?

MR. KEATON: The question asked was whether it was started because of the strike—

MR. GOLDMAN: Excuse me.

The witness is here. I don't think this commentary should be taken—

JUDGE: All right.

I will meet objections as we get to them. Mr. Freedman, I have ruled that you don't have to answer the last question.

Go ahead, Mr. Goldman.

MR. GOLDMAN: All right.

Q (By Mr. Goldman) With respect to Mr. Orenstein and Mr. Turtletaub, Mr. Freedman, when were their services to commence?

A Approximately four weeks prior to commencing of the principle photograph.

Q All right.

When was principle photography to commence?

A We have not set a date.

Q And why is Paramount delaying the project and why have they not set that date?

A I did not say we were delaying the project.

Q Why has Paramount not set the date for principle photography?

A It hasn't—we have not established our production [494] schedule yet for all series.

Q For all series?

A Yes.

Q All right.

Now, why haven't you established your production schedule?

MR. KEATON: Objection.

It is irrelevant and immaterial and going beyond the scope of direct and not within the framework of the pleadings.

And is designed and calculated to provide the union with information about the employer's plans in the strike.

JUDGE: All right.

I will sustain that. Do you want to make an offer of proof?

MR. GOLDMAN: No. That is all right.

I will go on to others.

Q (By Mr. Goldman) Is Ivan Goff currently employed?

A He is under contract to us, yes.

Q Well, Mr. Orenstein and Mr. Turtletaub, are they under contract to you?

A Yes.

Q And does the same situation hold true with Mr. Goff as it does with Mr. Orenstein and Mr. Turtletaub?

A What is the same situation?

Q That you just described?

[495] JUDGE: Are you asking that they have not started work because a schedule has not been established?

MR. GOLDMAN: Yes.

THE WITNESS: Schedule has bee established for the series that they are to render their services on.

Q (By Mr. Goldman) Has Mr. Goff started work?

A No.

Q All right.

Let's go to Mr. Roberts—

MR. KEATON: I will object to that, your Honor.

W are now doing piecemeal what you ruled earlier we were not going to do.

He—

MR. GOLDMAN: Your Honor—

MR. KEATON: —is arguing as to each witness, whether he is working, and I think it is outrageous for him to try and find out who is crossing that line.

MR. GOLDMAN: Your Honor, General Counsel and Mr. Keaton on direct, brought out the fact that these people were employed as of February 1st—

JUDGE: Gentlemen, I don't want to get in too much argument about it.

It is a legitimate inquiry as far as I know during the course of a strike, to determine who is working and who isn't [496] working, as long as that is relevant to the issues.

Mr. Goldman, will you give me a little help as to the relevancy of this point?

MR. GOLDMAN: Yes, your Honor.

It is very simple. If Mr. Orenstein and Mr. Turtletaub were eliminated from the list as not being employed and if Mr. Goff falls in the same category as Mr. Orenstein and Mr. Turtletaub in that he is not working, how have we, as a union, committed 8(b) (1) (b) conduct towards those people that are not employed by the company?

Or are they just sitting out there in some nebuluous term of "never, never land," or do they have to actually employed by the company, working?

Mr. Orenstein and Mr. Turtletaub are not, and it turns out that Mr. Goff isn't.

JUDGE: Well you haven't estabished that Mr. Goff is in exactly the same position as the other two.

MR. GOLDMAN: Well—

MR. KEATON: May I be heard for just one moment?

We have established at this point, that Mr. Goff and all the people on this list other than Mr. Orenstein, and Mr. Turtletaub, were working as of February 1, 1973 and thereafter.

I submit it is not within the pleadings of this case to establish by anyone whether the strike rules of the

Guild have been effective or ineffective; that is not an issue before [497] the Board.

And if these people were in fact working, it doesn't make a dilly dee of a difference whether they are working today.

And that is what counsel is asking for.

JUDGE: Gentlemen. Mr. Goldman, that was my point. You haven't established that anyone but Orenstein and Turtletaub were in a special position.

The others will testify—were identified as having been employed on February 1 and continuously thereafter with the exception, I think, of Mr. Levy whose terms of contract expired.

MR. GOLDMAN: All right.

JUDGE: So let's go on, please.

MR. GOLDMAN: Well, let me—I would like to finish—getting back to—all right.

Q (By Mr. Goldman) Let's get back to Lawrence Heath.

Is Mr. Heath under a direct service contract, or loan-out agreement?

A I am not sure.

Q Whether it is a loan-out agreement or a direct service contract, Mr. Freedman, are you familiar with or have any knowledge of, what is encompassed in either of the agreements?

A In Mr. Heath's agreement, yes.

Q All right.

[498] Does part of the agreement cover the writing functions?

A Yes.

Q Howard Leeds; is he on a loan-out or direct service contract?

A I cannot remember.

Q All right.

Now, with respect to Mr. Keeds, do you have any knowledge concerning his contractual status, in that it covers writing functions?

A yes.

Q It does cover writing functions?

A yes.

Q Skip Webster; loan-out or direct service contract?

A I believe Skip Webster is direct services.

Q And does his contract provide for the writing functions?

A Yes.

Q Sherwood Schwartz; direct service contract or loan-out?

A That is a loan-out.

Q And do you know who it is a direct loan-out with?

A Redwood Productions.

Q What is the name of that?

A Redwood Productions.

Q All right.

And do you know if Redwood Productions has any other employees?

[499] A I don't know.

Q Part of that arrangement between Paramount Television and Redwood Productions calls for the use of Sherwood Schwartz writing functions?

A Yes.

Q Gary Marshall, direct service contract or loan-out?

A I am reasonably certain it is a loan-out.

Q Do you know the name of the company?

A No.

Q All right.

Would that agreement have a provision in it for writing functions?

A Yes.

Q Jerry Belson; direct service contract or a loan-out?

A I don't know.

Q Would you be familiar with—you have knowledge of the fact that whatever contract it is, there is a provision for his writing function?

A Yes.

• • • •

[518] So now included in the script consultant's functions are the duties to rewrite and polish and the writing functions that we have described before?

Is that correct?

[519] A Not always, but I think in this list the people that are designated as script consultants do have that function.

• • • •

[533] I will call Frank Paris.

Whereupon,

FRANK PARIS

was called as a witness by and on behaf of the General Counel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Would you please state your name?

A Frank Paris.

Q What is your address?

A 14220 Terrabella in Arlita.

Q California?

A Yes.

Q Where are you employed?

A Walt Disney Productions.

Q What capacity are you employed in?

A Executive story editor.

Q All right.

And how long have you held this position?

[534] A Six months; and three and a half years prior to that I was the associate story editor in the same department.

Q Do you have a personal services contract?

A No.

Q How are you employed?

A How was I employed?

Q How are you employed?

A On a week-to-week basis.

Q All right.

And what are you duties?

A Well, as the head of the Story Department, I am in charge of finding literary material to be produced as motion picture or television for our television series. I am also in charge of recommending writers to producers for any open writing assignments.

I am responsibe for negotiating the purchase of literary property and am responsible for negotiating the salaries of writers that we hire.

I am the title registrar for the company; and as the head of the Story Department, I am responsible for all operations in the Story Department in Burbank, New York and London.

Q All right.

What authority, if any, do you have with respect to hiring writers?

[535] A No authority to actually hire a writer. I recommend writers to producers on open assignments.

And they make the decision whether or not they will hire a particular writer.

Q Based on your recommendation?

A Yes. Because unless a writer comes to them from the outside or someone that they know personally, they look to me to recommend a writer for an open assignment.

And I usually recommend two or three.

And I sit in with the interviews with the producer and writer. And after that interview is over, we compare notes and thoughts, and the producer makes his decision.

Q Does he take your recommendations?

A Many times, yes.

Q All right.

What authority, if any, do you have with respect to adjusting grievances?

A Only as a mediator. If a writer has a problem more likely than not, he will come to me because I am the first person he meets in the studio.

And I am the person who keeps tab of what he is actually doing because my department is also responsible for reporting his employment to the Personnel Department, to the Payroll Department, we handle all the contracts; we file all the contracts, we keep all the employment papers for writers in [536] my office.

And so, I have a very close association with writers. And if he has a problem, more likely than not, he will come to me because it is usually a problem with a producer, or things aren't working out.

If the producer decides that the writer is not working out, he will ask me to tell him and it will be up to me to let the writer go.

• • • •

[537] The motion to strike is denied.

Q (By Mr. LeVine) All right.

When did you became an associate member?

A I forget the exact date. I haven't written for four years, and it was either a year and half or two years after my last assignment that they notified me that I had been reclassified from current status member to associate member.

• • • •

[538] MR. LE VINE: Yes.

Your Honor, we will offer to stipulate—General Counsel would offer the stipulation that Frank Paris, executive story editor, at Walt Disney, is told by Carey Wilbur, an agent of the Guild, that if he crossed the picket line, he would be subject to penalties by the Guild and he could be penalized to such an extent that no writers would work for him.

And this was in a telephone conversation.

We would further offer the stipulation that on April the 9th, a notice of disciplinary hearing in charges charging Mr. Paris with crossing a Guild picket line at Walt Disney Productions on or about March 6th for the purposes for rendering services for Walt Disney Productions, which company was [539] at the present time, on the Guild strike list, was filed by the Guild and sent to Mr. Paris.

And that a hearing—has taken place—a hearing took place on the charges on—what date—on May 24th, 1973.

JUDGE Do you agree with that stipulation?

MR. GOLDMAN: Yes, except for one thing.

I would like to have the date when the alleged telephone calls was made to Mr. Paris.

MR. LE VINE: All right.

It was February the 22nd.

JUDGE Is that your stipulation?

MR. LE VINE: Yes, it is, your Honor.

JUDGE: Mr. Goldman?

MR. GOLDMAN: Yes, I will so stipulate, except to the facts that the trial has been adjourned to a date uncertain in the future on disciplinary matters.

JUDGE: You were saying that with respect to Mr. LeVine's statement, as to the trial, that the trial has not taken place?

MR. GOLDMAN: It is scheduled and it was adjourned to a date uncertain in the future at this point. And that took place yesterday—that adjournment.

JUDGE: Do you accept that, Mr. LeVine?

MR. LE VINE: Yes, I would, your Honor.

[540] JUDGE Do the rest of you gentlemen agree?

MR. KEATON: I am unclear what he means by "adjourn." Did it commence yesterday?

MR. GOLDMAN: Yes. It commenced and was recessed to the date—

JUDGE: Do you gentlemen join in the stipulation?

Mr. Keaton?

MR. KEATON: Yes.

JUDGE: Mr. Fisher?

MR. FISHER: Yes.

MR. MILLER: Yes.

JUDGE: All right.

The stipulation is received.

• • • •

[546] MR. LE VINE: I will call Mr. John Mantley.

Whereupon,

JOHN MANTLEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

[547] DIRECT EXAMINATION

• • • •

[548] Once those scripts are assembled, I hire directors to make those scripts.

I also decide with the help of my producer, where and when these episodes should be shot, which directors should shoot which episodes, and in consultation with the director and the rest of my—and my producer, I decide what actors shall appear in what roles in those episodes.

Finally, I supervise the direction—that is, I view the dailies each day and discuss with the director, the direction in which the work is proceeding, whether we agree it is in the right direction or not.

Finally, I view rough cuts and consult with the editors about what changes should be made.

I hire the musicians who will score these episodes. I supervise the dubbing of these episodes.

And I finally have the final say on what the answer print will be; which means the final version of the show which is presented to CBS to be put on the air.

I am also instrumental in consultation with CBS in deciding which episodes shall play first, and what order they shall play during the season.

Q All right.

Now, what authority, if any, do you have with respect [549] to the adjustment of grievances?

A Well, I would say almost total authority. Do you want examples of that?

Q Yes, please.

A Well, there are many.

I suppose there is one, for example, at the moment that is a bit complicated, but I will make it as brief as possible.

CBS Cinema Center Films made a very excellent film called "Little Big Man," and they shot a substantial amount of footage on a magnificent sequence which was the massacre of Indians in an encampment with many calvary men and so forth.

There was a great deal of footage which was not used in that film and which CBS Cinema Center Films had.

And it occurred to me that it would make a very interesting Gunsmoke episode if we did the story of the man who led that raid; and as the man who dropped the bomb on Hiroshima, he was in atterrible emotional state for many years—or one of the men was.

So we developed that story after CBS Cinema Center Films had agreed that we could buy some of that stock footage to use, so that in moment of aberration, he would remember, and we would use subliminal cuts of that massacre.

And after the film had been cut, Program Practices came [550] into it and desired that we remove several cuts because to their eye, they appeared too violent.

The film was then aired. And I received from the Stuntmens Union a demand for $25,000 in residuals—payments for the so-called stunts which appeared in that episode.

Since the cuts were almost subliminal and it was necessary even for the stunt men to stopframe on a movieola to discover what the stunts were and who was doing them, I refused to pay that.

And I demanded that this particular controversy go to arbitration.

It has not yet been settled.

Is that what you mean by "grievances?"

Q That is one type of grievance.

Do other grievances arise?

A Yes. Well, for example, if a director comes up to my office—which has happened several times—and says, "I simply cannot work with this cameraman," I must then go down to the set and try to resolve that grievance; otherwise the film stops.

And in one particular instance where this happened, I went down and the cameraman said "The director screwed up the dailies and he is just copping out; it is not my fault. The director said he couldn't get the proper shots."

So I said to the cameraman, "I suggest that when you are [551] asked to set up a shot, when you have it set up, you ask the director to look through the camera, and then ask him if he is satisfied with what you are getting."

So the dispute was thus resolved.

Another example of a grievance was when we were on the Rogue River last summer and we did a two-part episode, a stunt man had agreed to a certain sum of money—I have forgotten precisely how much it was—to do quite a dangerous leap from the top of the gorge into the river.

And we had underestimated by about 30 or 40 feet the heighth of that leap.

And the stunt man requested more money. He said, "It is more dangerous than you told me." And of course, I gave it to him. I thought he was entitled to that.

Is that enough—

Q I would say so.

From your—based on your own experience with other executive producers, employed by CBS, do they have the same responsibilities that you would have?

A I would think so.

• • • •

[556] Q All right.

And when did you receive your last writing credit?

A I would guess about nine years—eight or nine years ago.

I was the story editor on Gunsmoke at that time, and I rewrote John Meston's work and Kathline Hite's.

And both of them objected to being rewritten.

And the credit was given to me.

[557] I did not really write those scripts in their entirety. I rewrote them substantially and Mr. Meston objected.

Q That's all right.

You have had no writing credits since that time?

A None whatsoever.

Q All right.

And why are you a Writers Guild member?

A Because I am obliged to be.

Q Would you explain that answer?

A Well, when I became an executive producer, and was not taking any credit whatsoever for any writing that I was doing, and there was a minimal amount of it, I called The Writers Guild and said, "Why must I continue to pay dues since I am not getting any credit or any residuals and I am doing very little writing?"

And the person that I talked to at The Guild said, "You do do some writing."

And I said, "Yes, I do."

And she said, "In that case, you must be a member of The Writers Guild by the Writers Guild By-Laws."

And I said, "What happens if I decide that I don't care about that, and I don't remain a member?"

And she said, "In that case, no writers will be permitted to work with you."

• • • •

[558] Mr. Katzman, who is the producer on Gunsmoke, is also responsible for budgets.

• • • •

[559] Q All right.

Do these—making arrangements for labor on locations, does that involve negotiating contracts at all?

A Oh, of course it does.

Q And who would Mr. Katzman be negotiating with?

A Mr. Katzman would make the decision as to who he wanted, how many people he wanted in each case, and then would probably in most instances, then tell the production manager who is also on location, to make the deal.

He would be the one who decided.

Q Are these deals with individuals or with labor organizations, or what?

A Both. They would be labor organizations in the case of carpenters, and drivers for The Teamsters, but in the case of bit part players, or people who do small parts in the show—and I would presume with extras—they would be individual contracts.

• • • •

[560] Q All right.

And what authority does Mr. Katzman have, if any, to resolve or settle grievances or problems which may arise in the course of the production?

[561] A Well, substantial. I think any good producer tries to relieve his executive producer of as many responsibilities in the area of grievances as he possibly can.

Q Any particular examples come to mind?

A Well, there are many, you know. Occasionally, as we have heard here before, and I have heard, there is a problem with an actor on a set who is resisting direction.

And there is a conflict between him and the director,

and the production is being held up, he will go down to the set and resolve that difference.

At least on occasion he discharged the actor in question.

And rightly so, I think.

• • • •

[562] On my show, as on many shows, but not all, an associate producer, Mr. Honthaner, is in total charge of the post-production area of the show.

That means that he is responsible for seeing that the dailies arrive on time; that they are properly printed.

Sometimes we get bad print jobs, too light or too dark, and so forth, and he is in charge of going to the lab to correct those deficiencies when they occur, and try to find out why the occur.

Once the dailies are put together, and I have approved a rough cut, Mr. Honthaner then takes the finished print and gives that print to the sound cutters and the effect cutters, and to the looping editor.

"Looping", if you don't happen to know that term, means that if you are on location and you have got an airplane flying overhead during dialogue, that's fine in a modern show, but in a western, you obviously can't use that.

So that dialogue has to be lip synced in the studio so that we eliminate that noise.

Sound effects have to be cut.

And Mr. Honthaner, once I have decided who the composer will be, shall attend the sessions wherein the places where the music will be placed, are decided upon; it is called [563] "spotting."

He is responsible in that area.

• • • •

[565] Q What responsibility, if any, does the Associate Producer have for resolving grievances or problems which arise in the post-production process?

A He has the same responsibility as have other people in my employ who I have put in charge of departments.

Mr. Honthaner—I don't believe he would ever fire anyone without my permission, although I think he believes he would have that right.

He does come to me and he has said on occasion—I have told you about instances before the fact—before the season began, but if it is of interest to you, I can give you a specific example that occurred during the season.

There is an unfortunate tendency in this industry to regard television as sort of the stepchild of the industry.

And pay scales are far lower in television than they are in the motion picture area.

And Studio Center—Cinema Center Films at one time operated out of Studio Center, which is where we produce Gunsmoke, and there was a time when their people had very little to do—

Q "Their peope," referring to the film entity?

A Yes. And I—

Q Motion picture film entity?

A That is right, yes.

[566] And I needed people—additional sound cutters and effects cutters on Gunsmoke because I had done an elaborate location show which required a lot of that.

And the studio wished because these people were on salary—the people that is, from the motion picture end of it—wanted them employed.

So we put them to work in our cutting rooms.

When this happened, there was a great deal of controversy because the people from the film industry who were the assistants to my cutters, were making almost twice as much money as my people.

And my people complained that they didn't do half the work.

Mr.—I would not be aware of this unless Mr. Honthaner came to me and said, "Look, we have an ugly situation on our hands. Our people are very dedicated and care quite a lot and they are upset because, first, the people who were working under them, are making a lot more money than they are, but they are particularly upset because these men take no pride in what they do.

"This is not their show and they don't care about it as we care about it.

"And I think these people ought to be replaced."

So I went to Bob Norvet, who is vice-president in

charge of Studio Center here, and to Edward Dennault, who is [567] his assistant, and I said, "I'm sorry, gentlemen, I know what your problem is, but I want these people out."

And they were indeed replaced and the problem was resolved.

Q All right.

Now, would you describe for us, if you would, the duties of the executive story consultant on your program?

A Yes.

Q What is his name, first of all?

A Jack Miller.

Q Mr. Miller is in charge of the entire department—

A Which department?

Of Story.

Perhaps it is easiest to say that at the beginning of the year Jack and I and generally Mr. Katzman, if he has time, get together and decide what kind of stories we are going to reach for.

And we usually decide to try to attempt to find new writers for Gunsmoke, because I have a limited number.

I believe they are the best in the industry, but I keep losing them because they keep going to features, and I have to keep trying to replace them.

Mr. Miller makes recommendations to me about writers that he thinks might work with Gunsmoke, because for a great portion of the time in addition to his other duties, I require [568] him to read material from other writers.

That is part of his functions.

So that he then says, "I would suggest Joe Smith and Jim Brown," and so forth.

And I say, "Fine, ask them to come in and see if they have got anything that would interest us."

Q "Jim Smith" and "Joe Brown" are people that he has selected out of a greater number of applicants?

A That is right. Out of the writers that are within his knowledge that he knows—work he has seen because we don't bring anyone into the show unless we have read several of their scripts.

So we have some concept of what kind of ability they have.

So he then makes appointments with these men and they come in and they tell him stories.

And supposing, for example, that a dozen writers came in—I think there were 15 or 18 this year—out of that 15 or 18 writers, he came to me with three or four stories of which I believe I approved three.

I think he came to me with four and I approved three of the stories.

He then went back and put those three writers on assignment; the assignment being to the extent of an outline.

Q And did he make a deal with them at that point?

[569] A Yes.

He makes out the forms and sends an official notification to Ann Nelson, who is in charge of that area of Business Affairs for CBS at TV City.

He sends them over under his signature an announcement that "Jim Brown" has been set to do an outline for Gunsmoke.

In addition to those duties, I have from CBS—and to the best of my knowledge, I am the only television show in all of Hollywood which has this right—the right to read unsolicited material.

It is normally returned unopened because of the danger of lawsuits.

Ever since I began with CBS, one of my stipulations for working has been that I be permitted to read this material because I find fresh material comes from this area, and many fine writers have come out of that area.

So he reads all of that material; and there is a lot of it.

And if there is in that map of material that comes unsolicited to the network, material which he believes is viable material for Gunsmoke, he brings it to me—first to Mr. Katzman, and then to me.

And if we approve it, we then proceed with those writers.

He is also responsible for seeing that every piece of unsolicited material—before it is read—that there is [570] disclaimer form which must be signed.

So nothing is read until the disclaimer form is sent in.

He also—when the outline comes in, it is submitted to me or to Mr. Katzman—and of course, Jack Miller has one himself—and we make our individual notes.

We then get together—the three of us—and decide what changes, if any, should be made in the material.

Occasionally—and those are lovely moments—an outline will come in when we all agree on it, and there is nothing to be done—just let him go and write it.

That is beautiful. But that is very rare.

And then he then takes our suggestion, including his own, and goes back to the writer and discusses with the writer, what changes ought to be made.

Rarely but occasionally a writer will make a series of objections to some changes that we want made.

In that case, Mr. Miller comes to me and says, "Look, I have got a problem. The writer won't do this."

And I say, "Okay, bring him in and we will talk to him."

JUDGE: Mr. Fisher, the question has been answered.

Q (By Mr. Fisher) All right.

Let me try to focus—I think what you are getting at—I gather what you are getting at—well, what authority [571] does the executive story consultant have with respect to—if any—with respect to resolving problems or grievances which arise from writers working under his direction?

A He has a lot of authority in that respect, but in the past few years, there have been very few—serious—in fact, I can't think of a single serious disagreement between the writer and the members of our production staff.

But certainly if those things arise, it is within his province to resolve them.

Q All right.

What authority, if any, does he have with respect to the termination of services of writers?

A Oh, a great deal. Again, as with Mr. Honthaner, or Mr. Katzman, he wouldn't be in that position if I didn't respect his judgment.

But if he comes to me and says, "I think we are beating a dead horse with this writer. I don't think he

is ever going to get it," I will simply say to him, "Discharge the man," or "Let's not use him anymore."

I recall one particular instance before Jack Miller became writer on this show when Cal Clements was the story editor.

He had twice rejected the story of Jack's; he didn't think it would work.

And he finally brought it to me because Jack insisted [572] "I like it," and Jack wrote it and it was one of our most successful shows of that year.

So that was one of our rare instances in which I have overruled the story consultant.

Q Have your executive story consultants ever discharged writers, then?

A Oh, yes, except you don't—

Q Wait a minute.

You said they discuss it with you first. Who talks to the writer after it has been discussed?

A The story consultant. But the word "discharge" is perhaps not a correct word in this case.

It isn't as if someone were permanently employed; they are not.

They are employed on a free-lance episode-to-episode basis.

If a writer doesn't work and he can't fix the outline, he may be discharged on that assignment—"cut off" as we say in the business.

That rarely happens but it does. And he would do that; Mr. Miller would do that.

• • • •

[589] And do you know if your contract between CBS and Mantley Productions, Inc. includes services of a writing capacity?

A Mr. King tells me it does.

• • • •

[596] Are we ready to go on?

MR. LE VINE: Yes, your Honor.

I will call Carl Milliken.

Whereupon,

CARL MILLIKEN, JR.

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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[597] Q And could you tell me what your duties as research director?

A I have three primary functions: basically I supervise the background research that is done for motion pictures and television production.

This in essence is a library function. We have a small reference library.

And I supervise a professional staff that utilizes our facility and the other depositories in the area in order to supply anybody connected with the preparation or production of motion pictures or television with the information that they require to fulfill their function.

Most of that information is visual, because people want to know what something looks like in order to duplicate [598] it.

My second function has to do with the recent establishment of a Warner Brothers research service which makes that same service on the part of my staff available to anybody, especially other people in the industry than Warner Brothers employees.

The third function is a quasi-legal function; in that I read all the scripts that are prepared in order to anticipate if possible any lawsuits that may be filed against Warner Brothers predicated on a violation of the right of privacy, libel, and right of publicity.

I also on occasion with the request of the Legal Department, make comparison studies of literary material to determine whether there is a possibility of plagiarism.

I think that pretty well summarizes my function.

Q All right.

And could you tell me what authority, if any, you have with respect to hiring employees in the research department?

A I have full authority subject to the review of the Labor Relations Manager, and within the form of the contractual relations that we have with the office employees' union that represents these people.

Q All right.

Now, can you tell me what authority you have, if any, with respect to the adjustment of grievances of the employees [599] in the Research Department?

A Our grievances are minor. I do adjudicate them as they come up.

As an example, we had a "dumb waiter" so called—an old-fashioned device which operated with a rope—perhaps some of you have lived in New York in the days when groceries went up that way—and this was a dangerous thing in that the rope kept breaking.

And people had a tendency of looking in to see where the machine was.

And at my insistence and on the complaint of people whose heads were about to be decapitated, we had a very expensive electric dumb-waiter installed.

By the same token, in recent times since the advent of the Burbank Studios, parking has become a terrible problem at Warner Brothers; and with only a little bit of insistence on my part, have I been able to get employee parking for my people.

They had to walk from Griffith Park to Warner Brothers each day to come to work because they couldn't find a place to park closer.

Q All right.

And did they question you—did they raise grievances concerning that?

A They complained very loudly, yes.

• • • •

[607] Whereupon,

MICHAEL CRICHTON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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[608] Q All right.

What authority, if any, do you have with respect to resolution of grievances that arise during the performance of your duties as director?

A As a practical matter I have a lot of authority. [609] Once again, I am not the employer; but I serve as kind of a final authority for MGM and for other issues that never reach MGM.

For example, we had an actor who, for personal reasons, had to leave the production before his scheduled time to leave, and we were able to adjust the shooting schedule—I was able to adjust it; so he was able to leave before he was scheduled to go.

Then there are ongoing problems with extras whose pay is determined on a scale according what kind of work they do, whether they represent a particular character or whether the character they represent is important to the film.

And the extras themselves will watch how they are placed in the film and try and decide for themselves how they are being used.

But in the end, it is the director's function to determine whether or not a character who may have been shot right in the middle of the screen, for example, is an important person or not.

We have a situation where two stunt men did a stunt, and I determined which stunt would go into the final film, which had financial considerations.

• • • •

[611] Q Where did Mr. Ellison call you?

A They both called me at MGM on the Sound Stage.

Q All right.

And what time did you receive that call?

A The first call was about 10:00 in the morning, and the second call was about 2:00 in the afternoon.

Q Did you recognize Mr. Ellison's voice?

A Yes, I did.

Q What did he say to you and what did you say to him, if anything?

A He called to tell me that I had been recognized crossing the picket line earlier that morning, and that the members of the Guild were very excited and very upset about the fact that I had crossed the picket line.

He said that he felt that it was necessary to make an example of someone, and I was going to be it.

The suggestion was that there was a good deal of personal animosity directed toward me. He said that I had better get out of there—out of MGM.

And I told him that I was only directing, that I was no longer writing, and that I felt that I was obeying the [612] Writers Guild strike to the extent that I could; which is to say that I had a contract to perform directing services and I had a Guild that governed that function.

And that Guild—meaning the Directors Guild—had told me to work or face damage suits. And so I was working. I was not writing.

• • • •

[613] Q All right.

And did you have any further conversations by phone with any Guild representatives?

A Yes, with John Furia.

Q About what time?

A It was about 2:00 in the afternoon.

Q On what date?

A The same day.

Q And where did he call you?

A He called me down on the Sound Stage.

Q All right.

And did you recognized Mr. Furia's voice?

A Yes, I did.

Q And do you know what position Mr. Furia occupies with the Guild?

A I think he is president elect now; I don't know what he was then.

Q Did you recognize his voice?

[614] Yes, I did.

Q All right.

And what did he say to you and what was your reply, if anything?

A Well, he was very sort of paternal, and he indicated that he understood the difficulty of my position, and he recognized how much I wanted to direct the film.

And how much effort I had put into it prior to the start of the strike.

But he said he wanted me to know that this was a very serious action in the eyes of the Guild, and that they were going to have to act very rapidly and with some force.

And that he wanted to make sure that I understood the situation I was in.

He said that I was virtually alone in my stand as a strike breaker.

And he named several other hyphenates who had respected the strike.

I repeated my feeling, that I was not writing but that I was only directing, and I had another Guild to govern that.

And I asked him about some other writer/directors whom I knew; and I asked him what they were doing.

He said that he didn't know what they were doing. And in fact, I knew perfectly well they were breaking the strike.

I told him finally that if "push came to shove," I would [615] rather be thrown out of the Writers Guild than the Directors Guild since I felt my future was really more with the Directors Guild.

And he explained that it wasn't that simple: that if I were expelled from the Writers Guild, that I couldn't work as a director in the future—work solely as a director because members of the Writers Guild could not work as writers for me as a director if I had been thrown out of the Writers Guild.

• • • •

[619] Q All right.

In your work as a director, how do you function in relation to writers?

Do you work with them in any manner, shape or form?

A Yes, I do, when there is a separate writer.

Q And would you describe how that works?

A Generally, it is accomplished through a series of meetings where the writer presents his ideas, or as the project progresses, his script or changes in his script.

And this material is discussed and further changes are talked about; and differing views from the director and the writer are reconciled hopefully.

Q Does this go on during production?

A This goes on classically in what is called "pre-production," • • •

• • • •

[622] CROSS-EXAMINATION

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[629] Q Now, with respect to directing a screen play, there comes time, does there not, in the direction of a screen play when a piece of dialogue has to be changed, and a scene might have to be altered.

Is that correct?

A That is correct.

Q All right.

Now, who normally performs that function?

A The director.

Q He changes the dialogue, alters the screen play?

A Yes, within a relatively small limit.

Q Well, let's say it is out of that "relatively small limit," then who would do it?

A The writer would do it.

Q In the case of an individual who has written the screen play and is directing his own screen play, he would do it?

A Should the situation arise, yes.

• • • •

[630] Q At the time of the strike, March 5th or 6th, you were advised by Harlan Ellison as to certain events, and you advised him that you would stop the writing?

A No, sir. I told him that I had stopped.

Q You had stopped the writing?

A Yes.

Q You had stopped the writing when the Writers Guild struck?

A Yes, sir.

• • • •

[634] REDIRECT EXAMINATION

Q (By Mr. Keaton) Did MGM require of you to perform any writing services after the commencement of the strike?

A No. And I told them well in advance that I would not. In other words, at the time I was doing revisions, I told Studio executives that I would not write further.

And no one asked me to beyond the start of the strike.

Q This letter of indemnification from MGM that you received, did it state that it indemnified you against being barred from working in the industry in the future?

A No.

• • • •

[639] Our next witness will be Paul King.

Whereupon,

PAUL KING

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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[641] Q All right.

What authority, if any, do you have with respect to the adjustment of grievances?

A It varies; I have resolved grievances occasionally with certain of our series.

Q And could you describe the types of grievances which arise in the production process, or other activities in which you engage in in which you adjust grievances?

A As for example, an actor misbehaves on the series I generally get into that and can recommend his dismissal.

Q All right.

Are there any other types of grievances which you can adjust or have adjusted in the past?

[642] A There was an example a few years ago of an actor who felt during a sequence that the stunt man was a little bit too rough.

His agent indicated that they might sue the network; so I screened the film with the agent in question, and we agreed it really wasn't that difficult.

• • • •

[643] Q All right.

And could you tell me what authority, if any, he would [644] have with respect to the adjustment of grievances?

A I think you would have to define "grievance."

There was one instance when a film was being produced in Salt Lake City that utilized the use of helicopters; and one of the companies that supplied these aircraft, decided to increase their fee.

He arbitrated that since he was on the scene; and he informed them that they would have to abide by their original agreement—if that is a grievance.

Q Anything else that you can recall?

A There are very often disputes as to whom should play the lead or the secondary roles in these pictures; and he was directly involved in that.

Q All right.

And did Phillip Barry have similar duties to William Cayden?

A Yes. At that time he was Mr. Cayden's supervisor; and his duties were precisely the same with some more responsibility.

Q All right.

Now, could you tell me what the duties of Franklin Barton, who is described as vice-president, Program Development, are?

A He is responsible for the development of future programs for the network.

[645] My responsibility deals with current programs.

Q All right.

And could you tell me what authority, if any, Mr. Barton would have with respect to the hiring of employees?

A He has almost total autonomy in that selection.

He deals directly with all of the production companies, the indepents—the "creative community", if you will—and has full authority to decide who will do the various projects.

Q What authority, if any, does Mr. Barton have with respect to the adjustment of grievances?

A Again I think you would have to ask me what "grievance" would mean in this case.

There are so many different kinds of grievances that are involved in the production of pilots.

He could have a dispute, if you will, with the production company over whom might direct the picture.

He certainly would have the major voice in who was cast in these pictures.

If there are differences between the companies, he generally has the final voice.

• • • •

[662] CROSS-EXAMINATION

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[667] Q All right.

[668] Now, suppose he has given you the final draft that you Xerox or mimeograph, and you go into production and a scene becomes unworkable.

Do you have to contact that writer to change the scene?

A You may contact that writer. You have no contractual obligation to do so that I know of.

Q All right.

If the scene is changed substantially who gets the writing credit?

A The Writers Guild of America automatically arbitrates any writing that is done within a production company.

So the decision, in other words, is the Guild's; no one else's.

• • • •

[669] (By Mr. Goldman) I take it that the options that are open for a production company is to seek out another writer to make the substantial changes or to use their in-house writing ability to make the changes.

Is that correct?

A Again, if I may, you are making the assumption that what you have just described is a major rewrite.

Invariably this is not the case at all.

By production problems, I mean that the script is over [670] budget, one scene that was written night for night cannot be shot that way because of the extraordinary calls that effects the next day's production, and—

Q All right—

A There are those—it is a technical thing, in other words—

Q Do you know what the A through H functions are?

A Yes, I do.

Q All right.

Now, other than the A through H, are the writing functions that I am talking about.

Let's say you have other than the A through H writing functions which would have come under the Writers Guild contract?

A Yes.

Q Those are the functions and writing responsibilities I am talking about.

Now, assuming at that point in time that there has to be one of those writing functions to be performed, I take it you have the option of going out to get another writer or use in-house writing?

A If it is other than A through H. The script would never be mimeographed final because it would not be acceptable creatively to the various people involved.

At that point, you do have an option to bring in another writer, or to do it with the personnel that are on [671] your own staff.

• • • •

[719] Q (By Mr. Goldman) Will you please describe a rewrite to us?

A A rewrite is generally a structural change in a script that is purely creative.

[720] Q Would you explain a polish to us?

A A polish is a very minimal alteration of a script, or even a scene; it doen't necessarily involve a whole play.

Q Have you read the collective bargaining agreement which is General Counsel Exhibit 2, page 70, A through H category?

A I have.

Q When you were referring to polishes and rewrites earlier, I take it it does not include the A through H category?

MR. KEATON: Objection, your Honor.

This is a conclusion of law again.

Furthermore, there are other provisions of this contract that makes the point, I think—and it also provides for exclusions from writing.

It is not just A through H.

This witness would have to be in your position to make those decisions.

JUDGE: Well, as of the present moment, the question to the witness is, if I understand it, when he testified to polishes, was the matter he was referring to contained in A through H, or was it not.

Is that your question?

MR. GOLDMAN: Yes.

JUDGE: I will take the answer to that.

If you understand what I am saying?

THE WITNESS: Well, if I can phrase this with my own [721] semantics, based on my own experience, and I can't comment to all the other individuals who perhaps interpret this in many ways.

But in my opinion, a polish relates to A through H and a rewrite does not.

A rewrite involves substantially more writing in a creative sense.

What is described in A through H relates to production problems that I alluded to earlier, and in my opinion, that is "polish."

Q In your opinion, as I understand it, A through H is denoted as polish in the industry, or just—

A In my own mind, the way I used to work when I was dealing directly with these things.

Q All right.

And a rewrite denotes something other than the A through H—a substantial change?

• • • •

HERBERT WRIGHT

[734] DIRECT EXAMINATION

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[735] Q What are your duties as associate producer?

A To—my duties as associate producer are, that I work as actually the producer's right arm and am engaged in all phases of the production from pre-production to post-production.

I operate in the field as a liaison between the producer and the actors, the producer and the director, the producer and the production crew, and the producer and the studio.

[736] I—if he has a problem that comes up on the set—for instance, if an actor doesn't like his lines or doesn't like his wardrobe, or he is unhappy with his dressing room, or the art director decides that the director isn't fully utilizing the set, or anything of that sort, then I have to settle that—that problem so we can go on shooting the film.

As well as I am involved as far as the scripts are concerned.

I am involved in reading that script, seeing how it fits the budget—you know, production problems.

And I am involved in whether we can shoot in L.A. or shoot in New York, or whether we can shoot it, you know, all in one day, or what is on the shooting schedule. And adjusting that.

Q You mentioned that you adjust various problems that arise.

Do problems ever arise with respect to extras?

A There are problems as to how many extras the director is allowed to have.

In other words the budget may say he may have 15 extras when he wants 300; that happens quite often.

Q All right.

And do grievances ever arise with respect to extras' pay that you would deal with?

[737] A Yes. But generally I am the last in the line to get involved with the extras' pay. Usually it is the assistant director, or the unit manager.

If they have a problem that they cannot meet, then they have to come to me. Generally I try to free the producer from the day-to-day, you know, trivia and tedium of his problems so that he can go on either producing the show over all, or produce the next show, for instance, in a T.V. series.

Q All right.

And do problems ever arise with respect to stunt men that you would resolve?

A Yes, they have.

Q And could you describe the types of problems?

A Well, I could describe the particular problem I have had.

Would you prefer that?

Q Yes, please.

A Well, we had a problem with—on "Cool Million" with James Farrentino where the stunt man was supposed to do the stunt—hanging from the ceiling of this room—and Mr. Farrentino decided that he wanted to do the stunt himself.

This was on the first couple of days of shooting, and it was against the studio policy for an actor to do a very dangerous stunt that we can't finish the film on.

In other words, he might be injured.

[738] Or that it simply will not look as good as the stunt man doing it.

So I had to adjust that problem, and—

Q How did you adjust it?

A Well, first of all, it turned out he did not like the stunt man, so I recommended we hire another stunt man.

So they hired another stunt man to replace the former stunt man.

• • • •

[739] And are you a full member of the Writers Guild?

A No. I am an associate member.

Q All right.

MR. LE VINE: Can we go off the record a moment?

JUDGE: Off the record.

(Discussion off the record.)

JUDGE: Back on the record.

Q (By Mr. LeVine) Did you have a conversation with Allan Griffis by telephone just prior to the commencement of the strike?

A Yes, I did.

Q All right.

MR. LE VINE: General Counsel would offer the stipulation that Mr. Wright spoke with Allan Griffis just before the strike, and it was the day that he received the strike rules.

And he was told by Mr. Griffis that as a member of the Guild, he would have to obey the rules.

And if he "scabbed" he would be expelled and no writers [740] would be able to work with him.

MR. GOLDMAN: I so stipulate.

JUDGE: Do the rest of you gentlemen join in that stipulation?

MR. KEATON: So stipulate.

MR. MILLER: So stipulate.

JUDGE: All right.

The stipulation is received.

• • • •

[742] Q (By Mr. Keaton) Mr. Wright, how did you come to join the Writers Guild in August of 1972?

A Well, last year I was employed as an associate producer on a T.V. series called "Cool Million."

Q "Cool Million"?

A Cool Million, which was part of the Wednesday night mystery movie series for NBC.

I had previously been employed as an associate producer on "Night Gallery."

And due to the peculiar problems of production on Night Gallery,—that is, doing three or four segments stories inside of one hour—one-hour show format—and

of course, a lot on locations as well as on sets, they chose me to go on "Cool Million" because I was to work as an associate producer underneath the producer, who was in fact, producing two or three shows at that moment.

And therefore, would need an associate producer to be [743] more active than just a person who would be an assistant.

In the course of that employment, several scripts came up where normally the producer might hire the writer to rewrite or polish the scripts in order to meet peculiar production problems, such as the show was supposed to be shot on the French Riviera, and we shot it on the back lot.

And another show was supposed to be shot in the Carribean, and we shot it on the back lot.

And another show was supposed to be shot in North Africa, and we shot that on the back lot, and out by Palmdale in the desert.

Unfortunately, all of the scripts have been tailored in oder to be shot in the locations to employ specific landmarks and nationalities; and since we didn't have that at our disposal here in the Los Angeles area, we had to make certain changes in order to actually cut the budgets in half.

So they asked me to make those changes, and I made those changes.

And therefore, I had to join the Writers Guild. And I got a letter from the Writers Guild, informing me that I had to join the Writers Guild; so at that time I joined the Writers Guild.

• • • •

[744] And what kind of work did you do when you were rewriting [745] these scripts; what did you do with them?

A You mean specifically?

Q Yes. How did you change them?

A Well, I had to change the locales of which the action took, and one of the scripts we had a minaret, and a man was being chased around the minaret, and then on the castle walls.

And he jumped into a helicopter, you know, which landed inside the temple walls and took off. Well, we figured, you know, basically, that it would probably cost the entire budget of the picture for a 10-minute scene.

So we then changed it so that it wouldn't happen that way.

So that it would happen on the ground and the helicopter did not have to be seen flying over the walls and over the desert.

We would just have a helicopter sitting there and a guy jumps, and then we cut, and then we are someplace else.

In another instance I had to change—there were "hells" and "damns" and censorship things that the broadcast standards of the network had asked for changes.

So I simply deleted those. It was a matter of editing. Those were the kind of scripts—

Q Did you write any new dialogue for the picture?

A Occasionally.

• • • •

[747] Q Were you ever gien an opportunity to vote on the adoption of the strike rules themselves?

A No, I was not.

• • • •

[748] Q All right.

And did you ever attend a meeting in which Mr. Saunders was present—a meeting of hyphenates?

A Yes, I did.

Q And did Mr. Saunders say anything at that meeting as to what had happened to his efforts to resign from the Writers Guild?

A He was—he had written the Writers Guild and the Writers Guild had corresponded back that he would not be allowed to resign because he was a member of the Writers Guild.

And—I can't remember exactly the reason, but the text was that they might consider his resignation after the strike, but certainly not before or during the strike.

Q And do you recall—excuse me—how did you happen to go to that meeting?

A I was invited to the meeting.

Q By whom?

[749] A Bob Cinader's office at Universal; he is also a hyphenate at Universal.

Q All right.

And is it your understanding that you were asked because you were a hyphenate?

A Yes.

Q The other people at the meeting were asked for the same reason?

A Yes.

Q All right.

Now, how many people were there, approximately?

A At which meeting?

Q The one Mr. Saunders made the statement that you just testified to.

A At least 60.

Q I beg your pardon?

A 60, at least.

Q All right.

And did Mr. Saunders make any statement at that meeting just to you or was it a general statement to everyone present?

A Well, it was said generally, you know, in the course of the discussion because several people there were in the same situation of having not written for several years, and yet were expected to observe the strike rules —particularly the strike rule of not being able to cross the picket line.

[750] So it was said in a general mannor, and not just to me; althcugh I was sitting next to him.

Q In other words, Mr. Saunders spoke out loud, is what you are saying?

A Yes.

• • • •

[CROSS EXAMINATION]

[768] THE WITNESS: I called the Guild because, since I was a member of the Writers Guild, and they were going to go on strike, and I had received a copy of the strike rules, and at several points, it seemed to

me they were in contradiction with my present employment at Universal as associate producer on the theatrical motion picture "Newman."

I asked him specifically, since I had not been employed to write, nor was I writing, nor was I asked to write, nor did I expect to write in the future on that project in particular, since that was what my employment was, how did the Writers Guild rules affect me?

Was I going to be in violation of the strike rules if I crossed the picket line to work?

And that was an inevitability because at least a good portion of the—not a good portion, but a small portion of the schedule was on studio set which were on that lot.

And he replied at that time "yes" that I would be in violation of the strike rules if I violated the picket line by crossing the picket line; and I would therefore be referred to the Disciplinary Committee, and I would very likely be banned from Guild membership.

And that if I were banned from Guild membership, that it would affect me in the future as a producer because other [769] writers who were members of the Writers Guild would not be allowed to work with me.

Q All right.

And that is what you said to him and what he said to you?

A That is what he said to me. And I said, "Could there be no exceptions?"

And—

Q Did Mr. LeVine ask you the same question basically I asked you?

A Yes, he did.

Q All right.

Now, I would like to ask you—did you explain to Mr. LeVine just the way you explained it to me?

A To the best of my knowledge, yes.

Q Did you use the statement "If I scabbed, I would be expelled, and no writers would be able to work with me?"

A I do not remember if I said that exactly, no.

• • • •

[775] Q Is it not true that at the end of January, 1973, you wrote a teleplay?

A I rewrote a teleplay.

• • • •

[792] Q All right.

And what kind of responsibilities—authority does he have in relation to the handling of grievances?

A Usually quite broad responsibilities.

I know that there are grievances that are handled on the set, and the fact that I can't be too specific to me means that he is handling grievances on the set without coming to the front office.

Specifically, he does handle things initially like tentative writing credits, credit to others, grievances over pay.

• • • •

[793] All right.

What function does a director perform in relation to employment of people—the selection and so on?

A He performs a very large part in the employment of people that he wants to function in his crew.

Q Could you give us some examples?

A Specifically, the director would more than likely, be [794] allowed to hire his choice of director of photography, for editor—all of the key people—production designer,—

Q Does the producer select any personnel?

A The producer will also participate in the same discussions with the director.

He would perhaps choose his associate producer. And initially he may have chosen the writer.

He may have a voice in choosing the production manager and the location auditer.

Q All right.

Do producers have occasion to negotiate collective bargaining agreements on distant locations?

A I'm sorry?

Q Do producers have occasion to negotiate labor contracts on distant locations?

A Yes, they do.

Q And how does this come about?

A The need to—if you want to shoot a picture in certain areas, you need certain agreements with various of the locals in those areas.

So he is allowed to negotiate with those locals under the supervision of our Labor Relations Department.

• • • •

[834] ADMINISTRATIVE LAW JUDGE BARBAN: On the record.

Gentlemen, over the evening and this morning, I have given further consideration to the procedural problem concerning the availability of General Counsel's notes to Respondent.

The cases that I have read confirm my opinion that notes taken by an Agent of the General Counsel which are in fact substantially verbatim, come within the definition of a statement—witness's statements in the Board's Rules and Regulations.

The cases further confirm my understanding that these matters are to be—that these notes are to be considered by me In Camera to determine whether or not I consider they are substantially verbatim.

• • • •

[837] MR. LE VINE: I will call Staney Robertson, please.

Whereupon,

STANLEY ROBERTSON

was called as a witness by and on behalf on the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

[839] Q What authority, if any does the producer have with respect to the adjustment of grievances that arise in the production of a television program?

A The producer normally is the man who has the final authority with—if there is a grievance with the

cameraman or writer or associate producer, or something, the producer is the man who is supposed to solve those problems.

And if he can't solve them, then he has obviously the right to terminate the services of one of the people involved.

• • • •

[841] Q All right.

And what authority, if any, would this category have with respect to the adjustment of grievances?

A Very simply: when there is a grievance on a program, which may affect that program's deliverance or quality to NBC, we ask that the program people become involved to try and solve that problem so that A, we don't lose production, or the production quality is less than what we expect it should be.

Normally it is—he is in the role of a peacemaker because it is like dropping a stone into a pool of water. Many times what appears to be a minor thing can have a tremendous effect.

But what we try to do, and what I try to ask that the program people do is that they work in it as a peacemaker and try to settle it as amicably as possible.

Now there may become a problem in which they can't settle it, the producer can't settle it, and maybe I become involved and try with the head of the studio, or the executive [842] producer, whomever.

And we try to normally solve it for the best interest of both parties, the supplier and the television end of it.

• • • •

[848] Whereupon,

FRANK R. PIERSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[849] And of course, casting the actors. Just generally getting the picture made.

• • • •

[850] Q What authority, if any, did you have with respect to the adjustment of grievances?

A Well, I would either arbitrate the discussion of a grievance if it came up between two members of the staff, or if it was impossible to get the two men to agree, then just simply step in and make the decision myself or accomplish whatever needed to be accomplished myself.

Or in the extreme example, I would probably fire the —one or another of the personnel and replace them.

Q All right.

Now, could you give us some examples of the types of [851] grievances that arise in the production of a film in which you—which you resolved?

A Well, I'm trying to think specifically in connection with this, Mr. LeVine.

There was—for example when I was—when I had been going to direct this picture myself, I have made an informal commitment to a particular cameraman.

And when I subsequently became a producer and hired a director to replace me as director, I discovered that this director was unwilling to work with the cameraman who I had—and not actually employed, it hadn't gone that far —but I let him know that I wanted him to work the picture.

So they created what certainly seemed to me to be a grievance, and that the cameraman felt he needed the reassurance or security he would gain from working with a—I mean, the director needed the security that he would get from working with the cameraman with whom he was familiar.

It was resolved by—in this instance by me meeting his cameraman, and agreeing that his cameraman was equally competent; and I finally decided to go along with his cameraman.

That is the only specific grievance that I can think of offhand, although I could probably think of others if I—

Q Do grievance arise with respect to actors?

[852] A Inevitably. And the—of every type and kind, and specifically on that show where we are confronted with endess problems in grievances in connection with the star, George Peppard.

Q And could you describe those grievances, please?

A Oh, the—well, at one point there were some aspects of the script which he did not like.

These were discussed indirectly and in conversations between Peppard and me, and also in a number of memos that he wrote to me in breaking down the script and so on.

Some of these I just simply disregarded. In a couple of cases, I felt that he was right. And prior to the strike situation, I had those sections of the script rewritten.

There were—and then there were other areas in which I just chose to overrule him.

There was a matter of his—he wanted to have his clothing for the picture made by the studio, and which clothing, of course, he would keep after the production.

And I refused to allow that to happen.

He wanted to have his own—to have both a limousine and a studio driver and a self-propelled dressing room—what do you call it—that have an Indian name—they are a kind of self-propelled camper—

Q That's okey.

A But they are commonly available and rigged as dressing [853] rooms and sleeping rooms, and so on for the use of the stars.

And he wanted to have that instead of a trailer. And the problem there being that we would have to have two drivers, one for the self-propelled number and one for the limousine;—and The Teamsters come very high.

So I overruled that also.

• • • •

[855] Q All right.

And what did you say to him, and what was his reply, if any?

A It was a very lengthy telephone call and very argumentative, and—

Q Could you please tell me what he said to you?

A I will try to give you the gist of the conversasation.

I pointed out to him that—first, I explained in the simplest possible form that I could, what I was doing; that I was producing a film for Universal which was fully prepared in the sense that the script was totally finished.

And that there were no more writing services to be performed on that Monday or by anyone else.

And that I had a personal services contract to produce that, and that I wanted to go ahead and do that.

But my understanding of the work rules as I received them in the mail, and as they had been explained to me by him was that the Guild was taking the position that I should not cross the picket line in order to perform any functions.

And he stated that that was correct. And I argued that in the first place, I did not believe that the Guild had any authority to tell me what to do outside of my function as a writer.

Or in those aspects of my producorial function in which I would be working directly with the writer.

[856] But it seemed to me that this situation was unusually clearcut, and that I would be able to—and I promised him and I subsequently did—furnish the Guild voluntarily with a copy of the final shooting script which I intended to produce exactly as it was.

So that they could compare it with the shooting continuity at any later date to see whether or not anyone had indeed done any writing.

And I pointed out to him that furthermore, that the best guarantee that the Guild could have that no further writing would be done on that project would be to have a loyal member of the Guild in the producer function.

Mr. Griffis argued each point simply as a matter of appeal to individual conscience as a writer.

His attitude seemed to be simply that a loyal member of the Writers Guild would not cross the picket line to perform any function at the studio even including the hypothetical case I raised within the—what if they were

a plumber who also happened to be a member of the Writers Guild who is called to fix the pipes at the studio?

And he said, "He would be expected to respect the picket line."

Q All right.

Was anything said with respect to what would happen if you did cross the picket line?

[857] A Yes. He made reference to the clause in the strike rules which specifically threatend reprisals and punishments of various sorts for anyone who violated the strike rules.

• • • •

[870] REDIRECT EXAMINATION

Q (By Mr. LeVine) When did you complete the writing that you performed for Fox?

A It is not completed, Mr. LeVine, because I was unable to do any of the work because of the strike.

May I explain?

Q Yes, please.

JUDGE: Yes.

THE WITNESS: All right.

That payment was in advance to secure a contract for the writing—for writing services.

They paid me that money and the strike came down almost immediately, so at least in the official sense, I have had no further conversations with Fox.

And in any official way I have done no writing.

• • • •

[891] MR. LE VINE: I will call Sidney Kalcheim.

Whereupon,

SIDNEY KALCHEIM

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. LeVine) Please state your name.
A My name is Sidney Kalcheim.
Q What is your address?

A I live at 18283 West Wakecrest Drive in Malibu.

Q All right.

Where are you employed?

A I am employed by Screen Gems at the Burbank Studios.

Q In what capacity are you employed?

A I am the executive assistant to Arthur Frankel, the vice-president in charge of the studio.

[892] Q All right.

And how long have you held this position?

A For one year.

Q And could you tell me what your duties are?

A My duties involve negotiating deals for writers, directors, producers, acquisition of rights, overseeing the general managerial and administration of the studio as delegated to me by Mr. Frankel, as well as other productions and post-production duties.

And it also includes settling grievances and problems, and being a general troubleshooter as things come up.

Q All right.

In the course of your duties—well, let me ask you, what authority or responsibility do you have, if any, with respect to the hiring of employees?

A I make recommendations as to material writers that come in; and most particularly with regard to new projects that come through the development area.

And—

Q Are your recommendations generally followed?

A Pretty often, pretty often—most often.

Q All right.

And what authority, if any, do you have with respect to the adjustment of grievances of employees?

A When something comes up and I am asked to I get into [893] it, particularly since we are talking about writers with regard to Writers Guild members, a couple of things have come up in the past year with regard to credits and with regard to disputes as to submitted material.

And through my own good offices and knowing the people involved, I have talked with them, and we have gotten things straightened out as they should be.

That goes the same way for things that happened within the studio.

Q All right.

Are you a member of the Writers Guild?

A I am a member of the Writers Guild—associate member.

Q And how long have you been a member of the Writers Guild?

A Since 1959.

Q All right.

Now, in the course of your duties as executive assistant to Mr. Frankel, do you write any scripts or perform any writing services in the course of your duties?

A No, I don't.

• • • •

[931] At this time, Your Honor, the Association proposes the following stipulation: that on or about February 2, 1973 the Guild by letter reactivated all members who had withdrawn from the Guild within the preceding two years, and that an authentic example, excuse me—an authentic example of the Guild's reactivation letter is contained in Association's Exhibit Number 5.

JUDGE: Mr. Goldman?

MR. GOLDMAN: I will so stipulate.

• • • •

[957] MR. GOLDMAN: That is correct.

JUDGE: All right.

Mr. LeVine, are you in a position now, to rest your case?

MR. LE VINE: Yes, I am, Your Honor.

JUDGE: So you rest?

MR. LE VINE: I do.

JUDGE: Mr. Keaton?

MR. KEATON: We would like to offer a stipulation which we have discussed during the recess. I would like to offer to stipulate that if Mr. John Mandonza, resident Council of the Guild, were to testify in this proceeding, he would testify as follows:

That it is one of his functions to present evidence on behalf of the Guild at the Guild's disciplinary proceedings.

And that he has taken the position at the disciplinary proceedings brought by the Guild against persons holding the positions listed in the complaint in Section 6; and that such [958] persons are subject to discipline for crossing a Guild picket line without regard to whether they cross the picket line for the purpose of performing bargaining in its services for a struck employer or not.

And that the charges will properly lie for crossing the picket line even if the perseon charged has given assurances to a representative of the Guild that he is not and will not perform any ranking services for the struck employer.

MR. HACKLER: It is so stipulated upon the condition that you vindicate the subpoenas.

MR. KEATON: That is my intent.

MR. HACKLER: Addressed to Mr. Mandanza.

JUDGE: All right.

Now, just one fact; you have a copy of the complaint before you?

MR. KEATON: I do.

JUDGE: You referred to certain categories as appearing in paragraph 6—

MR. KEATON: Excuse me, Your Honor—

JUDGE: —and I rather suspect you meant paragraph 9.

MR. KEATON: Thank you very much, Your Honor, I did mean 9, and if Mr. Hackler will—

MR. HACKLER: I will accept that change.

MR. KEATON: Thank you, Your Honor.

JUDGE: Any objections to the stipulation?

[969] Call your witness.

MR. GOLDMAN: I would like to call Mr. Coon to the stand.

GENE L. COON

was called as a witness by and on behalf of the [970] Repondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[975] And if we like it enough and we think it works, we say to him "okay, you have got the story deal. Go home and put it down."

And at that moment the writer is employed, and at that moment hopefully the writer goes right back home to start to write that story.

He may well have to finish another script before he writes that story but he won't tell us that. In about five or six days the writer will come back with what is known as a story outline or treatment.

A story outline is telling in prose—not screenplay form but in prose of the story line—the action, the dramatic incidents—without dialogue that would eventually and hopefully be translated into the screenplay form.

Now—

[982] MR.GOLDMAN: Could you shorten the issue a little bit.

Q (By Mr. Goldman) Could you describe for the record, Mr. Coons, the process which a writer, producer and story editor goes through to arrive at a treatment or story outline?

A It is four words: a joint creative effort.

A premise is never complete; a premise is an idea. The writer who comes in usually does not know the show. He does not know the characters and he does not know how the characters will react given a situation.

He may not even know the format of the show even though [983] the basic formats of television series are pretty well cut and dried.

The writer comes in, and in the process of a multi-hour story conference, that premise is expanded and adapted verbally, unless there is a secretary present which there sometimes is, into the bones of a story outline.

The story outline though it is talked out and generally constructed in this verbal dialogue between these two or three people—the producer, the story editor and the writer—the story outline itself is then written over a period of five to six to ten days by the freelance writer.

And that is, assuming first of all the producer manages to convince the network that they should allow them to go ahead with this sort of premise; they usually clear a premise with the network.

Given the passage of—

Q Could you explain to us what you mean by "clearing the premise with the network?"

A Well, virtually everything on television as far as the programming—the program content must be cleared by two departments at a network, the network continuity acceptance or whatever the name may have at the various networks and the network programming department as represented by an assigned contact of that series.

Every story premise must be okayed by them; every completed [984] story outline must be submitted to them and okayed. And every, hopefully completed script—and I say "hopefully" because scripts odd enough are almost never completed in a very real sense—the completed script too must be okayed, and the various objections and changes that the networks raise must be accomplished after the conference with them.

And this is usually done by telephone or memo.

Now, at the conclusion of the story conference, the writer goes home and he comes back in five days later with something very much like this fifteen pages.

And—

Q And when you say "this" you are referring to Respondent's 5?

A Respondent's 5, yes. Almost never in my experience has a first draft story outline come in that is acceptable. I don't know why this is; possible because none of those writers write like I do. That is my ego operating.

And maybe it is because it is off—it doesn't fit the story, doesn't fit the format of the show.

He might have done some things that I as a producer know will not be acceptable to the network or the studio executives—

Q Such as?

A Well, on the series "It Takes a Theif", for instance, I was line producer; I had two associate producers, one of whom were the story supervisor and one of whom was

primarily a [985] production man. And I had an executive producer. At the beginning was a gentleman named Gordon Oliver, later on it was a gentleman named Jack Arnold.

And then there are gentlemen further up the line—and I utilized Universal at this time—citing(?) a man like Frank Price to whom Gordon Oliver would have been responsive to.

Seldom did Mr. Price come into play during the story portion of this, although he usually was apprised of the premise. And if he liked it then he would pass the word on down and say "fine, go with it."

Now, the first draft of a document similar to R5 would come in and I would call my story editor in if I had one, or I would do it myself if I did not, and have a meeting and work on it and see what changes had to be made in it to make it—the blueprint of what we would conceive to be a satisfactory screenplay.

Q Could you stop there for a moment.

What happens to the freelance writer who has turned in Respondent's Number 5 to you; has he been paid for Respondent's Number 5?

A He will be paid—I've never been too much involved with these administrative details, but he would be paid on delivery of the—I believe of the first draft of the story, and possibly on the delivery of the revisions which are usually [986] minor. That is a story payment.

And in the writers breakdown we have a story payment, a first draft payment and a final draft payment. That is the story payment, which was up until recently $900, I believe.

Now, it is conceivable incidentally that if that story comes in in such bad shape in its first draft—or even its revision—and I make the judgment that this writer is not goting to "cut it," and I made a mistake, that the story doesn't work, then I might very well exercise what is called a "story cut-off."

He would get his money and the story would be shelved or assigned to someone else.

In the case of the shows I usually—I produce, when a story cut-off is exercised, ordinarily if I want to use it, I would never assign it to an outside writer.

In the interest of economy I would do it myself or have a story editor do it.

But lets assume that it is a pretty fair first draft of a story outline and I have had my meeting with my story editor. We call the writer in and we tell him any additional changes we feel need to have to be done before we can submit it to the network and to the executives.

Hopefully these are minor; and indeed they usually are.

Two or three more days later he will turn in essentially R5 which is our first and second drafts of a story outline.

[987] Now at that point I have no right as producer or story editor to ask anymore work on that from the writer. He has committed his contract—he has fulfilled his contractual committment up to this point.

If I have some minor changes I would like to have done in this, I will make them or my story editor will make them before we submit them to the network.

We may do this for many reasons. We may do it because we feel that the person who it will be submitted to personally will like it better.

I must be honest with you when I tell you that we will occassionally put in something we know that they are going to take out; because that makes them feel useful, and I certainly think that they should feel useful.

And the script being adjudicated okay by me and my story supervisor and the executives of the studio, it will at this time be submitted to the network for approval to go ahead with the screenplay.

And by this time it usually gets an approval.

There are cases, of course, where a story might be totally innocuous one day and get an okay and the next day on the news the President is assasinated, and that is what the story is about and you're going to use "story" obviously.

But generally speaking at that point the network gives its okay with certain cautionary memos sent in, such as "be careful [988] of no open mouth kissing," and so on. And at this point with any luck at all you call the writer in and you say, "all right, go ahead with the screenplay."

Now I would point out that what I gave you is one script. If we are starting a series we are doing this with 12 writers or 16 writers or 22 writers; we have them all going at once.

So the first three or four months of preparation of a series really is based on getting the writers in, getting the script written, getting the stories okayed and getting the scripts written, and basically having something to shoot from.

Q Usually, when does the first three or four months of a new season commence?

A I would say from about April to possibly July—I would say you had better start shooting your show in July, I would suggest, or you are going to have trouble making September.

I would say that under optimum conditions—let me make that average conditions—if your writer doesn't bomb out on you and you are a capable man and you have got good peple working for you, then about 10 weeks from the day of the first interview with your writer you will have the scripts ready to shoot.

And that is assuming nothing terrible goes wrong, which it usually does.

At any rate, we now have a writer writing a screenplay. Hopefully you have got 12 or 15 writers writing a screenplay.

[989] Now, when he turns in his screenplay you have got a story that works. And if he is a skilled professional writer he will make the story work because the story does work.

Nonetheless in the 100 or 125 television show that I personally have produced I never have had a first draft screenplay come in that I could shoot or anything like shooting.

They always need rewrites. At this time when he submits his script, and this is usually two or three weeks after I have told her to go ahead on the script, I will take the script and give a copy of it to my story supervisor if I have one and we will read it and root about it for a few days and then we will come in and have a conference.

And then we will point out the various weak points that we have discovered and we will reach a conclusion

and a meeting of the minds and—as to what should be done to the script in the rewrite stage; at which time we call in a writer and get in a fight.

Because no writer likes to be rewritten. He wrote it the way he wrote it because he though it was right.

Now, we don't think it is right; we know our show. And so ordinarily we have a little unpleasantness, but you try to make it as pleasant as possible. And hopefully you conconvince the writer that these changes shall be done.

Now, I can recall many times when I couldn't convince a writer, and he said "I won't do it" and I said "Well, suit [990] yourself, because if you don't I'm going to." And that usually does it; they usually will.

In the course of this really third meeting by now, the writer is zeroed in pretty well on what the production unit is requiring of him. And if there are no major difficulties such as structural difficulties, for instance, which can pop up in the first draft screenplay that you didn't notice in the story, he will have a—I guess we call it a "second draft" back in a week or so.

And the same process will happen again. And then we go to the producer and the story editor; because we are entitled to, yet, one more process with the writer—the polish, which is the final process.

Now, this is all very evoutionary. In most cases in television—and there are few exceptions—the production executives would deal with the writers—four writers who are serving in additional capacities. And I think the reason for it is because the whole step is a created process.

It is a brainstorming session, and—well, I've often said that if you had a tape recorded going on at one of these story sessions, that at the end you would have a story written if somebody would transcribe it with proper editing.

At any rate, at the end of an evolutionary process you have what you fondly believe is a final draft screenplay—teleplay—and paradoxically enough this is the point the [991] writing begins. I know that sounds very strange.

When a screenpay comes in after polish and after the story editor and the producer have gone over it and made any pencil changes they want to and bring it up to what they consider perfect at that time, not knowing the

problems which will develop in the future, he will take the author's final draft, duly annotated and amended, and submit it to the mimeograph department and get mimeographed copies out at which time he will distribute it to his production staff; which is usually—in my case is always studio-assigned—to his story editors, the associate producers and the executive producers and the officers of the corporation who are on a list.

And I would say the usually distribution at this time is about 25 copies. Now, at this point the producer and the story editor have run out of writer. The writer has done his best, we must assume, to bring that script upto the condition that the producer and the story editor want it to be.

He has completed his contractual committments.

And then to our great dismay we find out three days later—a week later—that there are changes to be made. And this is the process that sometimes is downright staggering, there are so many changes to be made. And—

Q You said that the writer's committment is ended?

A After a story first draft, second draft and polish.

• • • •

[1012] Now let's assume you have handed in the final teleplay with polish and the rewrite and your services are no longer required, do you as a writer—have you ever been callend back by a studio to engage in the rewrite services?

A On my own property?

Q Yes.

A After I have gone through the usual steps?

Q Yes.

A Possibly once or twice in 300 times; I'm not sure, I can't remember.

• • • •

[1164] Q Assuming that next step is completed, then what follows?

A I will then do the rewrite that is involved and this might vary from very simple rewrite to a very extensive one, [1165] depending on the problems that appear in the material.

I will submit that and that is commonly called the second draft.

After that we will go through exactly the same process except it will be on a more limited scale. That is instead of dealing with larger issues such as the interrelationship of characters and the defining of the running characters and the plot line of the piece, the next revision which is generally called the polish for the writer, generally deals with just that, polishing, honing the material. Trying to make the dialogue better, more satisfactory. Trying to make it—trying to make your effects more dramatic. Trying to meet very specific production problems that may arise and generally just honing the work.

• • • •

[1178] Q As story editor did you hire writers?

A I recommended writers. That is I had told Jerry Thorpe and also the executives at Warner Brothers that I was going to be extremely particular in the selection of writers for this series because I thought it was a very exciting one and I wanted to find a certain freshness of approach. I also thought it was a very difficult show to write.

I would recommend therefore, writers. I read masses of material because even though I was familiar with most of the writers in the business, I wanted to read specialized material and I asked for particular kinds of material so that I would have some evidence that the writers who I thought would be suitable, were indeed suitable.

I then would recommend writers and as far as Mr. Thorpe was concerned, there was never any disagreement. People who I recommended he approved and people I did not recommend he did not suggest any one other than the people I did recommend.

There were however, some rejections from the network which was ABC. That is they did not wish me to employ certain writers.

• • • •

[1179] Q Could you explain the process you went through with hiring or recommending to hire these individuals?

A Yes. From my own recollection; from my own experience with other writers and from recommendations that came from agents I would in effect compile a list of writers who I thought would be valuable.

• • • •

[1180] Q Now with respect to the individuals you selected, what next occurred?

A As this show had never been on the air except in a 90 minute version—this is an hour series—it had never been on the air and because I wanted to make some very specific demands on the writers, I would call the writer in and show him the pilot and then discuss in great detail what I thought the show was about; what I wanted from them; the kind of story; and particularly the tone of it.

I perhaps should speak about that a little bit.

• • • •

[1182] I would tell the writers that because I had selected [1183] them with such particular care, that I expected them to write a script. That is I would help them to get through the stage where normally they would be or might be cut off with an option.

That is I said this both to express a confidence in their ability to do it and recognizing the fact that I thought it was a tough show to write and especially under the time pressures we were under and that I was therefore volunterring to help them to the maximum extent possible.

We would then sit down and in most cases find a premise between us. In a few cases writers came in with a premise in mind by which I mean a springboard, something to generate a story.

Q Excuse me. Does that mean you recommended the hiring of these people without a premise?

A Yes.

Q Okay.

A When we found the premise that I thought might be productive and which was or seemed to fit our series,

I would generally spend some time with the writer beginning to explore it, and hoping also to generate some excitement in him, believing as I think many people do that if you can excite a writer about the material, that he will do a better job.

The writer would then go home and develop—I encouraged the writers to come back before they had written their outline, [1184] to come back and discuss it with me verbally.

I told them that this would possibly save us both time and most of them were very anxious to do that and we did in most cases, did that.

In the first four outlines that came in I was very unhappy with all four of them which is not unusual because we all have expectations higher than possibly usually. On top of that I was at the same time having a great deal of difficulty with ABC in terms of the one script which was my own.

Somewhere along here I completed my script.

I was having troubles in terms of the concept of the show and some of the things that I was enunciating to you before in terms of where I wanted that show to go, the tone of the show, and the proportion of action—physical action in it as opposed to the flashbacks which generally were very static.

In coping with the problem which I first enunciated, that is that we had a man—a peaceful man—who was capable of extraordinary and rather excitingly visual violence, and in a very violent time and place and where that tension was the essence of the series.

As a result of both of those, my disappointment and the problems I was having with ABC, I then in each of the first four outlines, wrote very extensive detailed memoranda—I dictated them.

In most cases the outlines that came in varied from [1185] around 12 to 25 pages—no, I don't think there were any quite that short—about 15 to 18 to 25 pages. I double spaced.

I then wrote memoranda which frequently turned out to be almost half as long as the original outline.

This took me a considerable amount of time obviously,

because I was trying to be as specific as I possibly could be, not in citing my objections, but in citing specifically detailed things which I wanted them to include in the revision of the outline.

JUDGE BARBAN: If you will excuse me—Mr. Goldman, I hate to interrupt this because it is tremendously interesting, but I think we are getting a little bit away from the issues, are we not?

MR. GOLDMAN: I don't believe so, your Honor. I am trying to find out what a story editor; how he functions as a story editor.

JUDGE BARBAN: The witness is giving you evidence that you had anticipated?

MR. GOLDMAN: Yes.

JUDGE BARBAN: All right. Proceed, Mr. Furia.

THE WITNESS: Subsequent to that I found it in my practice of detail memoranda was just impossible in terms of my own time. I was working seven days a week and frequently 14 hours a day and subsequent to that, again I believe in every [1186] case, I did this same thing but I did it verbally. That is in meetings with the writers rather than taking the time to set it all down. It takes longer to write it down than it does to do it verbally.

After this the writers would bring in revised outlines; quite obviously very extensively revised outlines, and in most cases I did have them do some changes in that outline.

In many cases I myself did subsequent changes in the outlines before I submitted it to ABC.

• • • •

[1192] THE WITNESS: My reason for doing this were that first I had run out of contractual commitment from a writer; that is he had done everything he was obligated to do for the amount of money he was being paid and secondly, because as I have indicated I was quite clearly the one most familiar with the material.

• • • •

[1196] Q And what occurs when they deliver the scripts to you?

[1197] A We went through the same process of revision that I have described for outlines except that it was now included—all of the aspects of it—because it was in script form.

The details were obviously the or more in the script than they were in outline because we had all the dialogue and everything else that I have described.

My revisions therefore included not only attitudes and characterization but the expression of those attitudes; expressions of characterization and the details of the action.

In most cases I had found by this time I simply did not have the time to write anything down for the writers and we had developed a pretty good rapport by this time in any event, and these sessions were verbal. That is I would call the writer in and we would sit down. I would detail for him all of the problems that I found as well as whatever solutions I had to offer for those problems in as specific detail as I could, and then we would together attempt to find better solutions or ones which the writer preferred or which I preferred.

• • • •

[1226] Q And how many w iters did you interview resulting in the selection of those 18?

A Interview?

Q Yes.

A Perhaps 20.

Q Did you talk to any that you did not interview but eliminated from consideration?

A Yes. I thought that is what you meant by interview. I did talk to, I think, two, who I did not employ.

• • • •

[1279] CROSS EXAMINATION

Q (By Mr. Keaton): Mr. John Ford, the director that you mentioned, a writer?

A No. Excuse me. You mean in the formal sense of a writer—I would say no. I would say he writes with film.

Q But he does I take it do from what you know about him, the same kind of thing in changing the picture as you are shooting that you do?

A I don't know exactly the same. I am not sure that he actually writes anything down. He may take a scene that is written and work on it with the actors and just drop certain lines; improvise certain lines rather than actually writing something down. I am not certain.

Q But you know it can be an oral change instead of a written change?

A Yes. Very often I have oral changes after conferences that I do not have time to write them sometimes, but the actors don't really make up the lines themselves; they don't make up the situation themselves. Sometimes they do very well at it [1280] by the way.

Q An actor may be changing a line?

A Not without my permission.

Q No, but with your permission?

A Yes, of course. Sometimes it is a better line than I have written. As a matter of fact he is not the only one.

Sometimes a cameraman, a grip or a prop can also do that.

A I don't remember, were you the director in Caine Mutiny?

A No, I was not.

Q It was my understanding that in Caine Mutiny Marlon Brando rewrote a good part of the last few scenes?

A I wouldn't doubt it. Marlon is a very astute professional player but Marlon Brando was not in Caine Mutiny.

Q Mutiny on the Bounty. Excuse me.

A Yes. Well, Mutiny on the Bounty he did a lot of improvising and rewriting I would say. Yes. He usually does.

Q To your knowledge Marlon Brando is not a writer, is he?

A He is not what?

Q A writer in the professional sense?

A No, but when he directed his only film he did a lot of rewriting while he was shooting.

Now I don't know what you call writing but Marlon Brando made many changes while he was shooting the picture and I have forgotten—it was a western—I have forgotten the title of it, but it was changed and changed as he went along—the [1281] same way he does when he is acting. He is quite an unusual • • •

• • • •

[1302] MR. MILLER: Yes. The Association calls Mr. Sheldon Mittleman to the stand.

Whereupon,

SHELDON MITTLEMAN

[1303] was called as a witness by and on behalf of the Association and, after having been first duly reminded of his previous oath, was examined and testified as follows:

MR. MILLER: Will the Guild stipulate that Mr. Mittleman has previously testified and has identified himself, his background, et cetera?

MR. HACKLER: Yes.

DIRECT EXAMINATION

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[1312] Q Have you been involved in Association policy discussions concerning employment of hyphenates during the strike?

A Yes, I have. In fact I have been present at every single meeting of the negotiating committee, either the internal meeting of the committee itself or the meetings between the full negotiating committee and the negotiating committee of the Writers Guild of America.

Q Now in connection with the employment of hyphenates during the strike, was there any Association policy determined as to their employment?

[1313] A Yes.

Q And what was that policy?

MR. HACKLER: Objection. There is no foundation laid for that. The fact that he is presently in negotiations or participating is entirely too vague.

MR. MILLER: I believe I also asked him whether he was engaged in those meetings—the internal meetings—which determined Association policy and the answer was yes, he was.

JUDGE BARBAN: The objection is overruled.

Q (By Mr. Miller): What was that policy?

A The policy was discussed and finally agreed upon among the member companies of the Association, that in the event of a strike the hyphenate employees, that is the producers or associate producers or other types of executives who were members of the Writers Guild, would be instructed and directed to continue to report under their employment agreements but that they would be advised that they would not be required or expected to do any writing services under the jurisdiction of the Writers Guild Agreement.

Q Now was that policy decided upon in a meeting attended by the various representatives of the member companies?

A Yes, it was.

Q And was that policy disseminated to all members of the Association company—excuse me—to all member companies?

A Yes, in a number of steps. The policy was then given [1314] to the legal committee of the Association of Motion Picture and Television Producers, and the legal committee drafted and approved a sample, in effect, statement of policy which was sent to all the members to be eventually sent to the writers, the writer hyphenate.

The communication was made to all member companies as to this policy.

• • • •

[1319] Q (By Mr. Miller): Mr. Mittleman—I will withdraw the question—in connection with Universal City Studios what if anything—what if any action did Universal City Studios take in connection with this policy?

A Universal sent notices and advised in many cases orally, all the hyphenates, all the executives who they knew or believed to be also members of the Writers Guild.

MR. HACKLER: May I ask a question on voir dire with respect to that answer?

JUDGE BARBAN: I don't believe he has finished his statement.

THE WITNESS: No, I have not.

[1320] JUDGE BARBAN: All right.

THE WITNESS: They sent one or the other or both forms of communication to all executives whom they believed to be members of the Writers Guild. The substance of which was that in the event Writers Guild called a strike, each of these people would be expected to honor his employment agreement and to report for services in a supervisory capacity and the particular capacity was specified in that type of notice as a producer or as a director or as an executive or whatever.

• • • •

[1351] Whereupon,

ORISON S. MARDEN

was called as a witness by and on behalf of the Network and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

[1352] Q In the course of those meetings have there been formulated any policy with respect to the networks position on whether or not their executives, vice presidents, producers, executive producers and story editors and other executives should be required to work during the strike if those persons are members of the Writers Guild?

A Yes.

Q Would you describe or tell us when and the content of that policy? When it was formulated and what it involves?

A This would have been toward the end of February of this year and the policy was such that the persons

whom you have described were members of the Writers Guild would not be required to do any covered writing services.

Q What do you mean by covered writing services?

A In the film agreement that is known in the trade as A through H is not covered.

Q Is it your testimony it would be considered covered services for purposes of that policy?

A I believe that is true. I am not an absolute expert on the film agreement but in general that is true.

Q My question has to do with what the policy was and not what the contract is?

A The policy was that they would not be required to write.

[1353] Q What production activities is CBS engaging in during the strike?

A At the moment a one hour television program called Gunsmoke.

Q That is the only activity?

A Yes.

Q Would you tell us how many scripts if any the Gunsmoke program had prepared prior to the commencement of the strike?

A 17.

Q And how many scripts are scheduled to be shot during this season?

A I believe it is 24.

Q To your knowledge have any hyphenates employed by CBS varied from the policy set forth—you earlier described a policy with respect to writing services during the strike?

MR. HACKLER: Objection. There is no foundation laid for this witness to be in a position by virtue of being in the labor relations department in knowing what writing services if any were being supplied by who.

JUDGE BARBAN: The question goes to whether to his knowledge.

MR. HACKLER: Then I withdraw the objection.

THE WITNESS: To my knowledge, no.

Q (By Mr. Fisher): And upon what do you base that answer; how do you get your knowledge?

[1354] A Through constant contact—not always daily—but quite constant contact with the executives of the program department.

Q Who would that be?

A Harry Lafferty; Paul King; Frank Barton; Bill Berry, who do keep me informed as to the production activities as part of my background in dealing with negotiations and the strike.

• • • •

[1359] REDIRECT EXAMINATION

Q (By Mr. Fisher): Mr. Marden, you stated I believe, that the scripts were to your knowledge, in final condition and that certainly no writing services were done by any of the hyphenates on the program?

A Yes.

MR. HACKLER: I don't think that is a fair statement, he said to his knowledge none was done.

JUDGE BARBAN: Lets assume the Witness' testimony is that to his knowledge that was done.

Q (By Mr. Fisher): Upon what do you base that knowledge? Anything more specific?

A I would say two things. Again in my continuing contact with the program executives and also the statement by Mr. Mantley that appeared in print that while they were on location shooting in Arizona, he ran way over budget on that particular episode because he felt that he shot the script as it actually was and therefore shot more material than he needed because he was not going to do any writing or rewriting.

• • • •

EXCERPTS FROM GENERAL COUNSEL'S EXHIBIT 16 A-O

[4] MR. LAVERY: The hearing in the matter of Guild versus Cy Chermak.

• • • •

[60] MR. LAVERY: Okay.

MR. MENDONSA: I have no objection if you speak slowly.

CY CHERMAK

called as a witness on behalf of the Respondent, testified as follows:

• • • •

[62] The private facts are far more ugly. My wife, my child and I have been subjected to an almost unspeakable campaign of vilification and harassment. For example, I found myself exposed to the horrifying experience of having a member of the Council of the Guild —Brad Radnitz, by name—threaten my wife by telling her that my going to work would end my career and that the Guild would not permit writers to work for me in the future. I, myself, received intimidating calls from officers of the Guild. The end result was that both my wife and I ended up under doctor's care and I was finally hospitalized.

• • • •

[80] Q When you went in on the 13th of April, 1973, to Universal, you stated that the company did not consider you working. Did you yourself consider yourself working?

A No.

Q You went in for the purpose of, one, to eat lunch and to make phone calls. Were those official business calls?

A No.

Q These were all personal calls?

A Yes, sir.

Q May I ask what was the purpose, then, of going to Universal Studios?

[81] A It was an act of defiance.

• • • •

[85] MR. MAIZLISH: I'm going to interrupt you, if I may.

Mr. Chermak has, during the course of the recess, crossed out a number of things in his statement, comments regarding his actions from April 16 on and the reason why he did that was because it is very clear that this hearing is limited to his actions of April 13th, 1973.

It did not go beyond that. If the Guild desires to initiate anything else, we're certainly prepared to respond to it. Mr. Chermak is prepared to state what he did, why he did it and do so with a clear conscience. I simply say to you that he did not perform any writing services nor had anybody do any writing for him. He served in executive position and in that position he is twice removed, story editor and editor. The charge here before us is a charge that relates to April 13, 1973, and I think we [86] ought to direct our attention to that.

• • • •

[4] MR. LAVERY: May the hearing come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc., versus Robert A. Cinader. The matter is being heard before a trial committee duly convened pursuant to Article X by the By-Laws of the American Guild, West, Inc.

• • • •

[21] MR. LAVERY: Next witness.

S. S. SCHWEITZER,

called as a witness on behalf of the Guild, testified as follows:

EXAMINATION

BY MR. ORMAN:

Q Mr. Schweitzer, will you state and spell your full name, please.

A S. S. Schweitzer, S-c-h-w-e-i-t-z-e-r.

Q And you are a member of the Guild?

A I am.

Q How long have you been a member of the Writers Guild?

A Twelve years.

Q Did you have any duties during this recent strike?

A I did.

Q Will you tell us what those duties were?

A General investigatory duties of violation of strike rules.

Q Did you have any particular location while you appeared on those investigations?

A We were in the rear of the strike headquarters that is behind the Guild on Almont, I think it is.

Q Directing your attention to June 14, 1973, can you tell us whether or not you ever spoke to Mr. Cinader? [22] A I spoke to Mr. Cinader on Wednesday, June 13 at 3:20 P.M.

Q Was this in person or by telephone?

A By telephone.

Q Did you call him or did he call you?

A Well, I put in a call to his office, I think, some time around noon and left a number there and my name and he returned my call to the strike headquarters.

Q He called you directly?

A I think it was the secretary who got me on the line.

Q And did she say hold on, Mr. Cinader wants to speak to you?

A (Not audible response.)

Q When he got to the phone, did he say this is Bob Cinader or did Mr. Cinader identify himself as being Bob Cinader?

A Yes, he identified himself and I recognized his voice which I had heard before. I explained that I had been asked to call him because—I think there had been something in the Trades.

He talked freely about his own ambivalence about the past 14 weeks of picketing. He told about an incident in the prior week. I think when we were picketing at 20th and he was airing his feelings and another picket told him that if he felt that way, that he had no business being on the picket line. I think we talked about current negotiations. He told of a bet he made with Sy Gomberg as to when the strike [23] would end. He talked about the fact that loose lawyers would be at his trial and he felt that if the Guild had any class, they would give office space.

I told him that they were getting lunch and in those days, I think we had about eight lawyers. He said that they ought to put their names up on the door anyway

which he ended. He also mentioned the letter sent to management in which he said that he would not write while working at Universal and he said that he hoped that the strike would end because he was unhappy with the calibre of the scripts that he was getting and he ended that by saying that Mike Franklin would upstage the PGA which was due to have its annual meeting the following Monday by calling our memberships to ratify settlement and we signed off.

• • • •

[42] ROBERT A. CINADER,

called as a witness in his own behalf, testified as follows:

EXAMINATION

BY MR. SUSMAN:

• • • •

[45] • • • The studio made several efforts to induce me to go back to work in a combination of threats and promises, mostly coming from the package, rather than from the studio administration. My position was that I wasn't in a position where I could do it because of the story-editor function. The week that I went back to work, I was told that if I would function as executive producer, they would tear up the old contract which would eliminate any story-editor function from my old obligation to the studio. I told them that that partially solved my problem in terms of my own understanding of the jurisdiction, but I couldn't be sure that they were doing it in good faith because at that time among the hyphenates, there was a great deal of confusion about how sincere the studios were by not requiring you to write.

One of the hyphenates—I won't mention his name—told me that he wasn't going to write. They didn't want him to go back. I don't know if that was true or not, that is strictly to demonstrate a climax. So I said if they were willing to destroy my old deal with them and to wipe it out completely and to take the position of an

executive producer, that I would have no running obligations at all, if they would execute an agreement which I drafted myself in part, absolutely stipulating to this, then I would consider [46] that I was not in a position of conflict.

So I drafted an agreement which I cleared with my attorney then he read it to their attorneys, and I said that I won't come into the studios until that is executed and deposited with my lawyer. I do not have any copies here for you.

Q There is no need for it.

A Anyway, this agreement specifically sets forth that under no circumstances could they require me or permit me to do any writing and that they could not consider me to be in breech of contract by my failure to do any writing as long as the conditions of the strike lasted. They indicated that they would be totally willing to sign it. It was signed jointly by the studios and Mark VII, Limited and at that point I told them that I would return and I did which I went back in on the 7th of June which is 12 working days before the end of the strike.

Q Well, am I correct that you did not perform any writing services during the period of June 7 until the end of this strike?

A I did not.

Q Now, when you came back to work and during the entire period, during the working days from June 7 and to June 24, at any time going to or coming back from the studios did you ever cross the picket line?

A I did not. Well, I would like to point out that—

Q There has been some testimony that during the period of the strike that you served a hundred hours or so [47] on picket duty—

A Yes.

Q And I understand that you would like to correct one statement made by Mr. Wilber—

A Yes.

Q —that is having to do with picketing duties during the month of June, 1973?

A Yes. Carey's recollection was incorrect. There was one period between the end of the weekly or daily picket-

ing when they started demonstration of mass picketing at which there was a demonstration procedure at Fox which involved about a hundred pickets and I served on that picket line which is where I got into a conversation where Schweitzer was referring to. I was then called subsequent to picket following the end of the strike and I told them that notwithstanding the fact that I was returning to work—of course, that picket line was obsolete because of the fact the strike was settled Sunday night, June 24. I forget what day, but he said it was a Wednesday. I have a recollection that we were supposed to picket Monday morning, but in any event, it was scheduled after the 24th and that was eliminated automatically.

Q When you came back to work on June 7, was it as an executive producer of the Emergency and Adam 12—Emergency and Chase?

A Yes.

Q And as the executive producer of the show, you served in an executive and supervisory capacity?

[48] A Yes.

Q Did you hire people?

A Yes.

Q Did you have the authority to discharge people?

A Yes.

Q Did you have the authority to assign them to their duties on the show?

A Yes.

Q In other words, is it correct to say that you served as an executive under the management of the studios and of the Jack Webb Company; is that correct?

A That is correct.

• • • •

[51] Q BY MR. ORMAN: Is it your testimony that you saw the scripts that were written during the course of the strike?

A Yes. I read all of the scripts that were written during the course of the strike.

Q On both Emergency and Chase?

A Yes.

Q For what purpose were you reading those scripts for?

A I was reading those scripts for the purpose of the determining whether or not there was any value in the material. When I say reading the scripts, I should amend that to reading the scripts that were written during the strike as well as written before the strike, because in the case of Emergency, there were four scripts that were written Guild members who were turned in before the strike, and I think three or four scripts that were written on Chase before the start of the strike.

For the record, the scripts that were written before the strike were filed with the Guild as of the strike date, if I may add, to protect the writers who wrote those scripts.

So I had between the two scripts eight scripts—I suppose that you would say—legitimate and then maybe, [52] I don't know, seven, eight or nine more that had been scrounged from some place during the course of the strike.

Q Is that six or seven or eight for both Emergency and Chase or six, seven, or eight for each one?

A It is hard for me to say because that material is in a very disorganized form. In some cases, there were—

Q I was asking you, I want to know the number of scripts that you received and read on each series during the course of the strike?

A I would say maybe including the outlines or very brief story ideas, maybe about five or six on each one. I don't have any real recollection of it specifically because most of the material was so obviously useless that I just kind of read it and threw it in the out basket.

Q Then is it your testimony that the purpose of the reading of the scripts were to see whether they were useable or not?

A Yes.

Q Would it also be correct to see whether or not there would have to be changes to be made in the scripts?

A Yes, obviously, the useability would depend on work done because none of the material passed the advance first stage and you very rarely get a first shoot that is shootable.

Q Is it fair to say that you would make a mental or perhaps written notation that perhaps this scene would have to be changed?

A Well, let me put it this way. With respect to [53] the Chase material, I determined that none of the material was of any use at all including the pre-strike scripts. In the case of the Emergency material, I determined that two of the first draft scripts were shootable with no really creative work being done on them and I did not progress my thinking as to what would need to be done past that particular point.

I read the material and I said that these two scripts which were both written by the Guild members, you can go ahead and set them up for production because they are shootable.

Q Who did you say this to?

A To the unit manager who schedules the physical production of the show.

Q Did you discuss these two useable scripts with the director?

A Yes, I discussed one with the director because the normal working procedure is, as you gentlemen know, when you prep a show, you don't usually do it no more than a week or so before it shoots. So the only one that was being prepped, the first script of Emergency was being shot. None of the other material was shootable. There was discussions with the director on the prepping of the first Emergency scripts which I said had been written before the strike.

Q All right. Can you tell us the discussion in terms of hiring the actors, in terms how you are going to shoot it, in terms of what?

A Mostly it was a question of how it was going to [54] be shot because Emergency involves a great deal of physical rescue work because of the incidents written by the writer. And then you have to go and find some place for a guy to fall off a cliff and the normal part of my function is to go out with the director and discuss with him the feasibility of physically staging what the writing has indicated that he wants to do.

Q And would it be fair to say that at least whether or not to some of these things you determined whether or not they were physically or financially feasible to shoot the scene as written and therefore they would have to be either dropped or shot in a different way or changed in some manner?

A I do not know if that's a question that can be answered explicitly because the point is that you usually, when you are doing in this particular show, I am not generalizing now a rescue, but the dialogue which is possibly the blood pressure is 180 over 20 will kill you no matter what the guy fell off of.

So this mostly consisted of going up the mountain with the director and saying that he fell off of the cliff over here and the director said that I can't get the camera down in there, and then I say let's go think of some place else. There isn't too much of creative writing in this show of Emergency except when you get into attitudes with the winning character and when they are doing their acts, it can be technical and there is a great deal of work done on the dialogue, mostly by doctors, because if they said he had [55] no symptoms, then he would have been dead for six years.

Q You discussed, I think, the first show for Emergency quite thoroughly.

A Yes.

Q I think you said it was the second script that you felt was useable?

A Yes.

Q Did you have any discussions with this second script with anyone?

A No, because the first show on Emergency was scheduled for principle photography on the 26th of June which was two days after the strike was over and the way we work is that we never start planning the second show until the first show is launched. So I would not have gotten into any discussions with the director because under that contract, they don't report that far in advance. Anyway, until Wednesday the 27th of June after having launched the first one, I then sat down with the director and said listen guy let's screw up the second one, but the second script was written pre-strike.

Q Was there anybody functioning as a story-editor in reference to those two scripts during this period?

A Well, in the manner of speaking, I suppose you might say that somebody was because there are a great many people involved. For example, to illustrate, I have a script secretary who is full time to do nothing but coordinate with the Harbor General Hospital and the Fire Department on Emergency to find out what technical provisions have to be [56] made and that writing is done almost automatically by her because if she goes to the hospital and the doctor says change the symptoms, the symptoms are of no interest to us for the dramatic purpose. That script was revised according to my record six times between the time it was initially published and the time that it was finished.

Q As your script secretary, you say, take care of these technical matters, does she discuss those proposed changes with you before she incorporates these changes?

A Yes, she says—if the doctor says change the symptoms, what do you want from me. I don't know whether they are right or not.

Q And she tells you what the doctor says?

A Yes. He will say you have a guy, give him an intravenous injection of D5W—which I don't know what it is—and she will make it Wringer's Lactate and I will say wonderful; I don't care.

Q Now, in regard to this other series in Chase, how many scripts you say that you had on Chase?

A I think—with scripts and outlines—

Q Scripts and outlines?

A I say maybe there was about eight pieces of material. All of which I suggested that they abandon rather thoroughly.

• • • •

[76] MR. GOMBERG: What I am trying to get clear —I don't want to get involved in semantics, all of us have sold stories standing on our feet or sold concepts standing on our feet because we can do that. We are writers. We don't have to sit down when the script agent comes out with a structure of [77] a script. We can fix a script by standing up and saying that this

scene needs eliminating and this scene needs to be changed as to his character, and then we can make the people see as opposed—

THE WITNESS: You do that when you cut pictures too.

MR. GOMBERG: That is what I was just wondering because it seems to me that a structure or restructuring don't—I don't think that could be done without creative input.

THE WITNESS: Well, I disagree with you in this respect. I didn't do the restructuring as much as the site that the present structuring is not viable. It is going to have to be restructured to work right. Now, with the backlog of material that they had, they could have gone into production a month earlier than we did if they had gone with the concept that those earlier scripts were written. So rather than hencing the date that they wanted to present the show, I was inhibiting it because their argument to me was grant it if you like, it doesn't solve the problem. How in the hell do we get the thing made. I said that is not my problem. That is your problem. My problem is to tell you that it is not right the way it is and if you want to do it, it has to be done another way.

MR. GOMBERG: And you told them the way that it should be done?

THE WITNESS: It is what I am doing.

MR. GOMBERG: No, you said that they agreed to it.

THE WITNESS: Yes, but you say to somebody, for example, talking again about—let's say a bowl of eggs and encountered [78] in front of the enemy, you look at a piece of material and you say that it needs more depth of characterization, I don't think that gives them a lot of insight, especially at Universal.

You say to them that the start of the show should be a guy instead of a helicopter, that is not really saying that I have solved your problem. That is merely telling them that that is the way that you are going to solve your problem when you get around to doing it.

• • • •

[12] MR. MENDONSA: We will call as our first witness Don Sanford.

DONALD S. SANFORD,

called as a witness, was examined and testified as follows:

EXAMINATION

• • • •

[13] Q Now, directing your attention to March 17 of 1973, did you have occasion to have a telephone conversation with a member by the name of Jerome Bredouw?

A Yes.

Q And did you call Mr. Bredouw, or did he call you?

A He phoned strike headquarters.

Q Did he identify himself?

A Yes, he did. I just happened to get the call. It came in on the extension I was working on.

Q But he did identify himself to you as Jerome Bredouw?

A Yes.

MR. POE: When was this, Mr. Mendonsa?

MR. MENDONSA: This was March 16.

Q Now, will you tell us what you said to Mr. Bredouw and what Mr. Bredouw said to you in that telephone conversation?

A Mr. Bredouw called in to inquire about his status. He apparently received a notification from the Guild, the notification that all the members got about their obligation to check with strike services headquarters [14] committee about picket duty. He called in to inquire about his status, and he told me that he was employed by Universal in, I believe it was, their publicity department and was a contract employee and also a member of the Guild. If I recall correctly, he said he was a member of the Writers Guild East but he was a member of the Writers Guild, stated that he had only written a couple of scripts and that he had a dilemma insamuch as he had a contract with Universal and that

was how he made his living. And he inquired about what our rules were about crossing the picket lines in view of his status. And I told him about what I knew. My instructions were that—were that if he, being a member of the Writers Guild, prohibited him by our strike rules from crossing our picket lines. And I warned him about the danger of that. And he responded that he had this dilemma. This is how he made his living, and he couldn't very well quit his job and honor our strike rules. So we left it at that. I told him I would write a report on it, and I would see what happens. I would say as a person the conversation was very friendly. We both recognized each side had a problem. He did volunteer, by the way, anywhere we wished him to picket except at Universal. He thought that might be a little embarrassing to him.

Q Did he state to you that he was working at the present time, at the time he was making the call?

A Yes.

• • • •

[4] MR. KNOPF: We are in session. The hearing will come to order. This is a disciplinary hearing in the matter of Writers Guild of America, West, Inc., versus Jon Epstein. This matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and By-Laws of Writers Guild of America, West, Inc. The members of the trial committee are James Poe, Nate Monaster, Michael Blankfort, Emmet Lavery, and Christopher Knopf, Chairman.

• • • •

[16] MR. MENDONSA: Call our first witness, S. S. Schweitzer.

SAMUEL STEVEN SCHWEITZER,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

• • • •

[17] Q Directing your attention to April 11, 1973, did you at that time on that date have a conversation with a member by the name of Jon Epstein?

A Yes, I did.

Q And did you call Mr. Epstein, or did he call you?

A I called him at his office at Universal.

Q And when you called his office at Universal, did he answer the phone?

A Well, his secretary answered, and I identified myself, and I was put through to him.

Q And when he got on the phone, did he identify himself as Jon Epstein?

A Yes, he did.

[18] Q And will you tell us what you said to Mr. Epstein and what he said to you in that telephone conversation?

A Well, I was calling because of a story in the trade papers about Mr. Epstein and, I think, two or three other writer-producers who had stated they were going back in to work at Universal. And he told me that was true. And he told me he felt he had no choice but to go in. He said he felt that he—that he supported the writers strike. He made some reference to the fact that he did not think that he didn't—he hadn't made much money as a writer, and he told me that he thought we could win the strike if every producer went in—And he said also he wasn't going to do any writing or talk to writers—and he said we would win the strike if all the producers who were members of the Writers Guild went in and sat in their offices and did nothing and collected money.

Q Do you recall anything else having been said in that conversation?

A They were just personal matters. I asked after the health of his brother, whom I had known for some 40 years. And I think that's about all I can remember.

Q Did you advise him that he was in fact in violation of the strike rule?

A Well, I advised him—I identified my function, the reason for my call when I first spoke to him. I told him we were looking into this. And I did remind him that

he was in violation of the strike rules by going in. And it [19] was at that time that he said that he had no choice.

Q Did you advise him then that he would be subject to disciplinary action?

A I advised him that I would be passing this report along to the disciplinary committee.

MR. MENDONSA: I have no further question.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: Yes, sir.

BY MR. HOLTZMAN:

Q Mr. Schweitzer, when you told Mr. Epstein that, in substance, you were calling as a representative of the investigating committee with respect to disciplinary matters and told him about the strike rules, what did you tell him about the rules?

• • • •

[21] Q BY MR. HOLTZMAN: Mr. Schweitzer, referring again to this telephone conversation—

A Yes.

Q —was it Mr. Epstein's statement to you in substance that he felt he had no choice but to go in and work as a producer?

A Yes.

Q And he stated further that he did not plan to do any writing at work; is that correct?

A That is correct.

Q Or even to talk to writers?

A That is what he told me, yes.

• • • •

[40] ARNOLD SHANE,

called as a witness, was examined and testified as follows:

• • • •

[42] Q Now, in Mr. Epstein's capacity as producer, does he have the authority in the interest of his employer

to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline the people working on the shows?

A Yes, he does.

Q Does he also have the responsibility to direct them or to adjust their grievances or effectively recommend such action?

A Yes.

Q And in so doing, does he use his independent judgment? He simply doesn't carry out the order of other [43] people, but makes his determination on his own; is that correct?

A Yes, that is true.

Q There are instances where he will talk to other people before he does something, but, nonetheless, he can go ahead and do it himself insofar as at least certain of the functions of the show are concerned, isn't that so?

A Yes, that's correct.

Q Does he supervise the activities of the cast?

A Yes.

Q And the writers?

A Yes.

Q Does he hire writers?

A Yes, he does.

Q Does he hire directors with or without director-producer approval?

A Yes.

Q Among his activities, does he also act as a liaison with the television networks?

A Yes, he does.

Q During the period that Mr. Epstein has been employed at Universal, has he done any writing?

A No, he has not.

• • • •

[44] Q Are you familiar with Mr. Epstein's personal service contract at Universal?

A Yes, I negotiated it myself.

Q You negotiated with Mr. Epstein?

A With his agent.

Q And does it give a right to Universal Studios to call upon Mr. Epstein to perform writing services?

A Yes, it does.

• • • •

[61] MR. KNOPF: You are saying it was all done before the strike? All of the scripts you have on "Owen Marshall," any network changes incorporated were done before the strike; is that correct?

MR. MONASTER: I think—

MR. HOLTZMAN: I think we are entitled—

MR. MONASTER: I think—

MR. HOLTZMAN: I think we are entitled—

THE WITNESS: Could I answer?

MR. KNOPF: Please.

THE WITNESS: I believe all the changes were done before the strike.

MR. KNOPF: All changes?

THE WITNESS: To my knowledge, yes.

• • • •

[62] MR. MONASTER: Forgetting about how many scripts on April 14 or May 5 or whether there is any variance, lesser or more, would you say that Mr. Epstein's presence at the studio in the period since March 5 has advanced one script one minute closer to production either by casting or cutting?

THE WITNESS: Yes.

MR. MONASTER: Then he has made a contribution to that script?

THE WITNESS: That—I don't think—Well, the question I don't think follows my last answer to the prior question.

MR. MONASTER: It follows beautifully.

THE WITNESS: Let me ask for a clarification.

MR. MONASTER: All right.

THE WITNESS: Is the casting of a guest star in a role a contribution to a script?

[63] MR. MONASTER: Anything you do for that script which means that the script will be that much closer to production when the strike is over is a contribution.

THE WITNESS: Then I have to answer yes.

• • • •

[3] MR. KNOPF: The hearing will come to order. This is a preliminary hearing in the matter of the Writers Guild of America, West, Incorporated versus John Michael Crichton. This matter is being heard before a trial committee duly convened pursuant to Article X of the Constitution and By-Laws of the Writers Guild of America, West, Incorporated. The members of the trial committee are James Poe, Nate Monaster, Michael Blankford, Emmet Lavery, and myself, Christopher Knopf, Chairman.

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[43] MR. MENDONSA: We will call as our next witness Harlan Ellison.

HARLAN ELLISON,

not having been first duly sworn, testified as follows:

EXAMINATION

BY MR. MENDONSA:

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[45] Q Will you tell us what you said to Crichton and what he said to you in that telephone conversation.

A I said that I was surprised to find out that he had crossed the line and that I was hoping he would come out quickly, that he had been observed going in, that Billy Woodfield had seen him, and a number of other people, and that I was upset, because Michael is a friend, and I did not want him to get in trouble with the Guild, and he told me that— [46] he gave me a number of reasons why he had crossed and why he was intending to stay and work on the picture. I can go into those if—

Q Yes, please tell us what he said.

A Well, the first reason was that he had been waiting a great many years to do this picture, and his words were, "I simply can't turn it down."

And the second reason was that he felt that he was not in contravention of Guild regs, regulations, because he was not writing and functioning in his capacity as a

director solely, and he made a specific point of mentioning that Metro-Goldwyn-Mayer's executives had promised to indemnify him against any action by the Writers Guild.

• • • •

[LINDSLEY PARSON, JR.—EXAMINATION]

[75] Q Are you familiar with Mr. Crichton's personal service contract with M-G-M?

A I am familiar with the fact that he had two, we prepared two contracts. I saw a deal memo where we prepared one as a writer and a subsequent one as a director.

Q And do you know if those contracts have a provision in them that would require Mr. Crichton to perform writing services when requested?

A The director's contract did not contain any such provision.

Q Was there another contract other than the director's contract?

A There was a writer's contract, as I mentioned, which called for the writing of the final screenplay, which we received prior to commencement of physical photography.

Q He wrote the screenplay under the employment of M-G-M?

A Yes, he did.

Q You say, though, his director's contract does not [76] call for him to do any writing whatsoever?

A It doesn't call for him to do any writing. A director, I think any director within the industry occasionally will change a line—this is historical—he will change a word if an actor has a problem stating a certain word or from a pronunciation standpoint. We did not call upon him, to my knowledge we didn't call upon him to do anything of that nature in this director's contract, but that's within the purview of a director.

• • • •

[85] MR. MENDONSA: I assume that that clause only prevents the Diretcors Guild from calling a strike or sanctioning a strike during the term of its contract with M-G-M; is that correct?

MR. HAUGHTON: No, it goes further than that. It provides that the Directors Guild has got to actively cooperate with the producer in insuring that its members do report for work unless the Directors Guild itself is on strike.

MR. POE: What is the expiration of that contract?

MR. HAUGHTON: There was a reopening on May 1st of—

MR. MENDONSA: It expired 31 April.

MR. HAUGHTON: No, it was a contract for three years, but the Guild had the right to reopen it on May 1st, 1973, which has been done, and we're currently setting ourselves up for collective bargaining starting next Tuesday, as I understand it now.

• • • •

[4] MR. SEATON: Come to order, please.

This is a disciplinary hearing in the matter of the Writers Guild of America, West, Incorporated, versus Hugh Benson, B-e-n-s-o-n.

• • • •

[30] MR. ORMAN: My first witness is Mr. Schweitzer.

S. S. SCHWEITZER

called as a witness on behalf of the Writers Guild, testified as follows:

• • • •

[31] Q Referring back to April 4th of this year, did you have an occasion to call the respondent, Mr. Hugh Benson?

A I did.

Q At the time that you called him, did you know him personally?

A Yes.

Q Could you tell us how you knew him?

A We toiled in the same vineyard.

Q Do you want to be a little more specific than that?

A We worked together at Cinema Center.

Q Did you recognize his voice at that time? Do you think you were able to recognize his voice over the telephone?

A Yes.

Q Did you call Mr. Benson on April 4th of this year?

[32] A Yes, I did.

Q And what time did you call him?

A About shortly after lunch, about 2:15.

Q Where—at what studio was he when you called him?

A At MGM.

Q Could you tell us why you called him? What was the occasion of your calling?

A We seen something in the trades that he was producing a 90-minute movie of the week for ABC at Metro, and so we called to check, to make sure, he wasn't crossing our picket lines.

Q When you say "we," was there anybody else listening in on the call?

A When I say "we," I am speaking on behalf of the Investigating Committee and there were other people in the room. Mr. Taylor was right next to me when I called him.

Q All right. When you called Mr. Benson on April 4, what did you say to him and what did he say to you to the best of your recollection?

A I greeted him and he greeted me, I think, he knew my voice as well as I knew his and I pointed out to him that we didn't think he should be crossing our picket line and rendering services to the studio.

He informed me that he was honoring the contract as a producer and did not—and was not going to do any writing.

I tried to present our position, and he repeated again that he was only honoring his contract as a producer and did not intend to do any writing. I asked him to check it out with Mike Franklin or one of the other lawyers here at the [33] Guild and then I wished him luck and that was all.

Q When you asked him to check it out with Mike Franklin, what was his response, if anything?

A I think he repeated that he was honoring his contract as a producer and didn't intend to do any writing.

Q Did he refuse—did he tell you that he was not going to check it out with Mike Franklin or anybody else at the Guild?

A Yes, I think so.

Q Could you tell us what was—did he tell you what specific series he was working on at that time?

A It was something called Shirts and Skin which was a 90-minute movie of the week for the American Broadcasting Company.

• • • •

[56] HUGH BENSON

called as a witness on behalf of the Respondent, testified as follows:

• • • •

Q What is your own evaluation of your ability to write, write a story or something normally a writer writes?

A As it is obvious, I am self-taught. Everything that I have learned, I have taught myself by observing others. I have never had faculties to take down a thought and put it down [57] on paper. Even writing letters are difficult for me. I have secretaries helping me to write letters because of this ineptness for using words. I can say the words, but I can't put them down on paper.

Q Now, on the basis of what work did you apply for membership in the Writers Guild; do you recall?

A Yes, on the basis of some five or six stories for Maverick, Surfside 6, and so forth. Notions that I have had when I was working for Bill Orr as an executive assistant, it was suggested that we get down on paper in collaboration with another person who was a member of the Guild, I gave him the notions, and they wrote the notions up and submitted it to the Guild.

Q Would you describe—could you give us an example for one of these notions, how you did it?

A Yes. In sitting and trying to get stories was very difficult for us at that time. We were noted for paying

little money for writing at Warner Brothers, and we had a limited amount of writers working for us and some were not very good.

We would think up our own stories and in sitting around a table in somebody's office, either mine or Jim Barnett's or Dick Bluel, we would think of stories. And some five or six that I thought up, notions that I thought up, I would tell Jim Barnett who was our story editor. Bill Orr would do the same, and he would go down and put it on paper, and we would submit it to a writer and that would be the story.

Q And you received story credits for that?

A Yes, I received story credits.

[58] Q With someone else?

A With someone else.

Q Did you yourself ever put pencil and paper in connection with any of these at any time?

A At no time.

* * * *

[60] Q Would you please describe in your own words what your functions as a producer on Shirts and Skin was?

A On first part of March or the last part of January, I was handling a 92-page script called Shirts and Skin written by Bruce Paltrow. I was asked to read it and after I did, I enjoyed it and after which I was asked if I would like to produce it. I said I would. I was told that I would have to [61] produce it in with the author himself as this is his first effort as a writer, and they didn't want to pay him the going rate, and they figured this was the way to give him more money. So they made him a co-producer and they asked if I would accept that, and I said I would.

And my function as the producer, I asked the script to be cut because it was too long. With the approval of the network, I hired the director, hired the cast, formed the crew, found the locations, cut the film, worked with Jerry Feelings who starred the film, picked the costumes. The normal functions of a producer is to be part of all of the departments, supervise all departments that make the film.

* * * *

[62] BY MR. MILLER: Mr. Benson, on or about what phase of the production of Shirts and Skin was on about April 4th, 1973?

A We were shooting it then.

Q Did you report to work at MGM on April 4, 1973?

A Yes, I did.

Q What time did you report to work; do you recall?

A At 8:00 o'clock.

Q Do you recall what you did during that particular date? What your normal functions would have been during a shooting day if you do recall that particular day?

A My normal functions of any film that I produced is to be on set from the first shot till the last except when I am [63] called away for other duties in my office.

Q For what purpose are you on the set?

A To supervise the director and make sure that what we discussed is going on film, to discuss with the director if there is a shot or shots not to my liking and have a discussion and see that either I lose or he loses. In most cases, I lose.

Q Are you also there in case problems or grievances arise which requires settlement?

A I am either there or I am called down.

Q In that event, are you responsible for the settling of these problems, adjusting these grievances?

A That is the producer's function.

Q Was that your function?

A Yes.

Q Among your functions?

A You are right.

Q Now, at some time during April, 1973, perhaps on the 4th, do you recall receiving a telephone call from Mr. Schweitzer?

A Yes, I did.

Q Do you recall what he said to you and what you said to him?

A Not verbatim, but in essence.

Q Would you repeat for the Committee, please, to the best of your recollection what he said to you and what you said to him?

A As I answer all telephone calls, I try to answer all phone calls without a secretary annoucing. I picked up the phone. Patty identified himself and we had a long greeting. [64] He asked me what I was doing at MGM. I told him that I was producing a film called Shirts and Skin for ABC.

He said, "Don't you know that we are on strike?"

I said, "I do know that we are on strike, but I am performing a function that was contracted for as a producer and, therefore, I have to do it, Patty."

I then went into some personal history of why I had to do it, which I will not bring to the Committee's attention.

He said, "Okay."

And I said, "Thanks for calling, Patty," and that was it.

I listened to Patty say that you ought to get in touch with Mike Franklin. I do not remember him saying that at all.

Q You mean you listened to him testify here, but you don't recall this was a part of the conversation?

A No, I don't recall.

Q Did you ever attempt to conceal the fact that you were reporting for work at MGM?

A Absolutely not. I went through the front gate in the morning and at night.

Q In connection with Shirts and Skin, did you perform any writing services?

A I did not.

Q What is your present position with MGM?

A I am executive producer on all on-the-air programming.

Q And what are your responsibilities now?

A I am an etxension, as he puts it, of Harris Kattleman, [65] who was head of the department. I am his extension on the stages, in the field, and so forth, to supervise the making of these films. We had four series that we are making this year.

Q Now, did you do any writing on or about April 4, 1973?

A I never wrote on Shirts and Skin, no.

Q Now, in connection with the entire production, you performed no writing?

A Absolutely not.

• • • •

[69] BY MR. ORMAN: You said after and the shooting started about April 1st.

A That is correct.

Q Were any changes made in this shooting script during the course of the shooting?

A Just the normal line or word changes that a director would insist upon or I would insist upon.

Q Well, were you ever called—did you ever suggest any changes made in the—

Did you make any changes in the shooting script?

A A word or line, yes.

Q Did you make this suggestion after March 5th?

A Yes.

Q After March 6, 1973?

A Yes.

Q Do you happen to know if you made a suggestion on April 4th of 1973?

A I could not recollect if I made any.

[70] Q When you say only a word, give us an example of any changes that you suggested on this picture after March 6th, 1973?

A Yes, changing streets of New York to streets in Los Angeles.

• • • •

[4] MR. LAVERY: Let's open formally.

This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. vs. David Levinson.

• • • •

[52] ARNOLD SHANE,

called as a witness on behalf of the Repondent, testified as follows:

EXAMINATION

• • • •

Q Turning to Mr. Levinson, has he been a producer [53] at Universal for approximately seven years prior to April, 1973?

A Yes.

• • • •

[54] Q Did he report immediately following March 16, 1973, to the studio?

A No, he did not.

Q What happened in that regard?

A He stayed out because of the strike for approximately four weeks.

Q Prior to his return to the studio, was his [55] employment function changed?

A Yes, it was. It was decided that instead of Mr. Levinson functioning as a producer, he would move into an executive area and would be in charge of the development of new programming for the CBS network for the company.

Q Was that a promotion to a managerial level above that he had previously held?

A Yes.

Q That began on or about April 16, 1973?

A That's correct.

Q With respect to his involvement as the liaison between the company and CBS, what was the nature of his duties?

A Well, during the strike it was just a matter of discussing with the CBS executives the status of some projects that had already been in work prior to the strike and having general suggestions as to what the project should be. Since the strike, of coure, it's been a matter of contacting writers and hiring them to develop the script.

Q Did Mr. Levinson perform any writing functions whatsoever during the writing strike?

A No, he didn't perform any writing services during the strike nor has he performed any since the strike.

• • • •

[3] CHAIRMAN ORINGER: That fine. I just want to enter some material into the record.

The hearing will come to order.

This is the disciplinary hearing in the matter of the Writers Guild of America, West, Inc. versus William Roberts. This matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and Bylaws of the Writers Guild of America, West, Inc.

• • • •

[45] EDMUND H. NORTH,

testified as follows:

DIRECT EXAMINATION

BY MR. ORMIN:

Q Mr. North, will you give and spell your name, please.

A My name is Edmund H. North, E-d-m-u-n-d N-o-r-t-h.

Q And are you a member of the Writers Guild?

A Yes, I am.

Q How long have you been a member?

A I have been a member since 1934 or '35. I hope that information is privileged.

MR. ROBERTS: I feel the same way.

MR. DERN: It's on the record now. You guys are in trouble.

MR. ORMIN: Q Mr. North, did you have occasion to speak to Mr. Roberts on April 4th, 1973?

A Yes, I did.

Q Can you tell us how it came about that you spoke to him?

A I was acting at that time as so-called strike coordinator working in Alan Griffiths' office, and there was a memorandum that came through addressed, I believe, to Alan Griffiths.

[46] Q For the record, Alan Griffiths is Assistant Executive Director?

A Yes, he is.

I was delegated to look into this, and I called Bill Roberts at Fox, couldn't find him there, called him at home.

Q Did you call him at home the same day, April 4th, 1973?

A Yes.

Q And you spoke to Mr. Roberts?

A I spoke to him, yes.

Q Can you tell us what he said and what you said?

A Well, as I recall, I started the conversation by asking Bill if it were true that he had crossed the picket line at Fox and he said that it was true. He said that he was involved as a producer in post-production activities on a film at Fox which he had—for which he had written the script. He volunteered the information that he felt that his services in his capacity as producer were very important at the time, very important to him as well as to the picture.

And I was genuinely shocked at his free admission that he had been crossing the picket line and his further statement that he intended to continue to do so. I pointed out to Bill what the possible penalties might be of this kind of action.

He told me that he had considered this very [47] seriously and come to the rationale and unemotional decision that this is what he proposed to do. That he had been doing it and he was going to continue to do it during post-production period on his picture.

Q With reference to his statement about post-production work, did he give you some details about what he was doing?

A He said the words "certain dubbing sessions, scoring sessions." I gathered the normal post-production activities of a major motion picture.

He specified, by the way, that he had done and as far as he knew intended to do not writing.

Q Did he make any statements about retakes?

A Yes. I believe the picture had some post-production retakes to be made, and he very much wanted to be around during that activity.

Q With reference to his statement that he had been going to Twentieth Century-Fox, did you get any indication as to how long he had been going there during the period of the strike?

A No. I got the impression that it had been—that he had gone in quite a few times, but I don't believe any time element was mentioned.

Q With reference to the fact that he was going to continue working, did you get any indication about how long he thought he would have to continue working on this picture [48] after this date?

A Yes. I got the impression it would be a matter of weeks. I assume something in the nature of a month.

MR. ORMIN: I have no further questions, Mr. Chairman.

CROSS-EXAMINATION

BY MR. DERN:

Q Mr. North, in the course of your testimony you indicated that Mr. Roberts told you that he had rendered no writing services during the period of the strike up to April 4th; is that correct?

A That is correct.

Q What was you discussion with respect to the retakes that you testified to?

A Well, as I believe I said in my testimony, he did say that he had done no writing. And whether he was going to do writing or not of course I don't know.

Q Was there any discussion as to whether there would be any writing done in connection with the retakes? Did you raise that or did he raise it?

A I don't remember that this was raised. What I did say—He said that he had done no writing.

I said, "Bill, that according to the Guild rules, the strike rules, has really nothing to do with it. You are acting in other capacities and crossing the picket line, and according to Guild rules that's a violation."

• • • •

[60] WILLIAM ROBERTS,

testified as follows:

DIRECT EXAMINATION

BY MR. DERN:

Q Mr. Roberts, are you a member of the Writers Guild?

A Yes.

Q How long have you been a member of the Writers Guild? When did you first join?

A I first joined in '37. I thing the Guild changed [61] and I wasn't writing for a long period of time. I think again in '46, as I recall.

Q You have been a member since then until the present?

A Yes.

Q Are you currently a member of the Writers Guild?

A Yes.

Q You worked on a film entitled "The Last American Hero"?

A Yes.

Q And that was based upon the factual life of a man named Junior Johnson?

A Yes; right.

Q How did you acquire and in about what year did you acquire the rights in that property?

A In January 1970.

Q And you acquired the rights from a third party, did you?

A Yes. Tom Wolf.

Q Did you then do any writing of a script based on that property?

A Yes. I wrote the story, rewrote—wrote a script, rewrote it several times.

Q You did this for yourself or under employment?

A No. This was speculative on my own.

Q When did you first present that property to [62] Twentieth Century-Fox?

A Well, it was first presented in 1972.

Q Did you enter into any agreement at that time?

A No. They were interested in it, but the change in management caused the whole deal to die.

Q During this period were you in partnership with anybody else with respect to the property?

A Yes, I was.

Q What was that person's name?

A John Cutts.

Q Did you and Mr. Cutts form a partnership?

A Yes, we did.

Q What did you call it?

A Rojo Productions.

Q When did Rojo Productions first get into serious negotiation with Fox after the change in administration over there?

A It was somewhere around May or June 19—Wait a minute. I am sorry. That's in error. The first negotiation with Fox was in 1971 and the second time was 1972.

Q Did you enter into various agreements with them in 1972?

A That's right. Yes, I did.

Q Isn't it a fact that you personally entered into a writing employment agreement with Twentieth Century-Fox?

A Yes.

[63-64] Q What was the purpose of that?

A To make revisions as required by the studio.

Q Isn't it also a fact that the partnership entered into an agreement with Fox to furnish your services as co-producers, you and Mr. Cutts, of the film?

A Yes.

Q Were there any discussions with Fox at the time of the negotiation relative to your creative controls with respect to the property and the production of the film?

A Creative controls?

Q What were your rights as far as the film was concerned?

A Well, I suppose the normal producer's rights, which are mostly rights of persuasion and can always be overruled by the studio, naturally. Rights of consultation with regard to post-production.

I think everybody here knows you don't get any absolute rights as a producer hired by the studio.

Q Isn't it a fact, though, that they did agree because this was your property you had consultative rights throughout the picture?

A Yes.

Q And you in fact did enter into an agreement with Fox, or the partnership did, and I am going to treat you and the partnership basically the same, where you were to render services to Fox as the co-producers of the film?

[65] A Yes; that is right.

Q When did you complete the final draft of the revisions of the script for the motion picture, on or about?

A Well, the revisions were being made all the way through production, actually. It's very hard to say. You know, you do one set and then another set of revisions as required and then another writer was brought on. He did a complete revision, I revised his revision, continued to revise the script, as I say, continually through production.

Q When did the picture go into production?

A October the 14th, 1972.

Q When did it rap? When did you complete principal photography?

A December 2nd.

Q Where was the picture shot?

A In North Carolina and for one week in Virginia.

Q Where did you edit the picture, or where was the picture edited?

A Well, they were editing—There were cutters there editing as they were shooting, but the post-production editing was done at Twentieth Century-Fox Studio.

Q I am going to show you a memo that you wrote dated February 26th.

A Yes.

CHAIRMAN ORINGER: Can we pause for just a minute to look at this?

[66] MR. DERN: Certainly.

Maybe I should identify what it is, because we are going to come back to it later.

Q What is this?

A This is a memo written by me after seeing the director's cut of the film stating objections, mine and Mr.

Cutts' to what we had seen on the screen, addressed primarily to Jerry Henshaw with copies going to other people. The purpose being to elicit studio support for our point of view with regard to the film, what should be done to it.

CHAIRMAN ORINGER: Excuse me. Would you like the Committee to examine this in any detail?

MR. DERN: I will try to bring out what it is and then you can decide.

CHAIRMAN ORINGER: That's fine.

MR. DERN: Q Does this document contain suggestions, for example, for changes about the film?

A Editing changes, yes. And one important thing which goes way back to the time it was shot. I will go into that in detail. The director photographed the ending of the film in a way which startled us all, including the studio, because it was never anticipated that the central character would be whipped at the end, be a loser, which is the way it was photographed, the way it was shot and acted.

I raised serious objections to that, so did Mr. Cutts. The director wouldn't even discuss it. He was very [67] angry and stalked out of the meeting. The suggestion for reshooting that very tag, which is about 20 seconds of screen time, was made in that memo after seeing the first cut.

Q Your suggestion, you are saying, was to make an upbeat ending?

A Yes, much more of an upbeat ending.

Q Instead of downbeat?

A Yes.

Q You wrote that memo and you made that suggestion on what date?

A This was February the 26th, 1973.

Subsequently, after pressure from other quarters, including salesmen—Mr. Cutts was involved in that; I wasn't there. Sales people for Fox, they didn't like the ending either, and Jerry Henshaw finally said, "Reshoot it."

Q Let me interrupt you. Is this the reshooting that Mr. North was referring to?

A Yes. That tag.

Q Nothing else was reshot?

A Not after the completion of December 2nd. Things were reshot during the course of making the film.

Just parenthetically, Lamont Johnson, as I say, when we tried to discuss it with him during the course of production refused to discuss it and stalked out of the office where the discussion was taking place. He just [68] refused to discuss it at any time thereafter until ordered by the studio to reshoot the ending.

Quite honestly, I wasn't sure that he would do it even then, because very often the studio would order him to do something and he would either ignore the studio or do it his way. And this caused a great deal of friction during the course of production.

At any rate, I went in to the studio that day to make sure he did what he had been ordered to do. That was the reason for going in at that time.

Q About when was that? It was after March 6th; is that correct?

A Yes. It was during the strike.

Q When they reshot that ending or that tag, as you call it, did they follow the suggestions which you had written up in your February 26th, 1973 memo?

A Yes.

Q Were there any changes in dialogue?

A The actor, Jeff Bridges, my conception was that it be silent, that he make a triumph gesture to his friends with a cup that he won. And Jeff said that he felt awkward with that and, "Why don't I say, 'Hey, I won.'"

Q Did you furnish that line to Jeff Bridges?

A No.

• • • •

[83] Q You have been a member of the Guild for a long time. I won't repeat the years again. I presume you are pretty well familiar with what "writing" is. I am not [84] conceding for purposes of this question that you couldn't have written while you were there, but I know that you didn't want to write, and that was your feeling?

A No, I didn't.

Q Did you do anything which in your mind constitutes writing services during the strike?

A Not in my mind, no.

I am told that there is a definition of "writing" which is broad. I remember briefly being on a negotiating committee, not the last time but sometime in the past, and the question came up if an actor changes a line or a director changes a line during the course of production he has to join the Guild. I though it was an absurd statement and I still do. But from my point of view, I was functioning as a producer.

Q You didn't add any lines, you didn't change any lines?

A No, none of that.

Q You didn't make any suggestions as to lines?

A I suggested editing, editing out.

Q Do you mean cutting?

A Cutting. Some of the stuff was so bad, the only way to correct it was to eliminate it. In that memo you will see I suggested some things, changes in juxtaposition of lines.

• • • •

[3] MR. KNOPF: I will call our meeting into session. The meeting will come to order. This is a disciplinary hearing in the matter of Writers Guild of America, West, Inc. versus Albert Ruddy.

• • • •

[65] MR. SMITH: Respondents would call Mr. Richard Moyer, please.

RICHARD MOYER,

called as a witness by and on behalf of Respondent, was examined and testified as follows:

EXAMINATION

BY MR. SMITH:

• • • •

[69] Q Now, Mr. Moyer, to your knowledge, does [70] Mr. Ruddy perform any writing services or do any writing work whatever in connection with his functions at Paramount?

A No. He has never represented himself as a writer, to my knowledge, and I was surprised to learn today when I was asked to come down here that he was even a member of the Writers Guild. He was or has never presented himself as a writer on any of the projects as put forth to is.

Q In all of your dealings with Mr. Ruddy in your official capacity at Paramount, Mr. Moyer, did you know or was it ever communicated to you that Mr. Ruddy attempted to do or perform any writing functions whatsoever?

A No.

Q When did you first discover that Mr. Ruddy was at any time a writer?

A Well, as I say, today I found out that he was a member of the Writers Guild, and when the HOGAN'S HEROES thing was brought up, I knew that he had something to do with that. I didn't realize though that he had been a writer on the pilot of it.

• • • •

[4] MR. KNOPF: That is accepted.

This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc., versus Herman S. Saunders, S-a-u-n-d-e-r-s. This matter is being heard before a Trial Committee duly convened pursuant to Article 10 of the Constitution and By-Laws of the Writers Guild of America, West, Inc. The members of the Trial Committee are James Poe, Nate Monaster, Michael Blankfort, Emmet Lavery, and Christopher Knopf, Chairman.

• • • •

[21] MR. MENDONSA: Yes. Very briefly, we intend to show that Herman Saunders did work for Universal City Studios or an affiliate of that company in violation of the Strike Rules, in violation of the Strike Orders. We intend to show that he crossed that picket line at Universal in violation of Strike Rules 12 and 13, and that his conduct was in violation of Rule 1 of the Strike Rules.

• • • • •

[22] MR. MENDONSA: Yes. I will call S. S. Schweitzer, please.

S. S. SCHWEITZER,

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

• • • •

[23] Q Let me direct your attention to April of 1973.

On that occasion, did the name of Herman Saunders come to your attention as a possible violation of one of the Guild's Strike Rules or Strike Orders?

A It did.

Q Can you tell us how that came to your attention?

A Well, apparently there had been an article in one of the trade papers which mentioned his name, and I was [24] asked to check on that, which I did.

Q You say you checked on it.

What did you do to check it?

A I called Universal Studios and asked for Herman Saunders.

Q And did you talk with Mr. Saunders at that time?

A I talked with Mr. Saunders at that time.

Q Did he identify himself as Mr. Saunders?

A Yes, but I have known Mr. Saunders for about 10 years.

Q And you then recognized his voice?

A I recognized his voice. He recognized my voice.

Q And the number you called was that of Universal City Studios, Inc.?

A 985-4321.

Q Now, will you tell us what you said to Mr. Saunders and what he said to you in that telephone conversation?

A Well, I told him I was calling to clarify, that I had been asked to call to clarify what was in the trades. I did affirm that he was indeed going in. He said that he had been made executive producer, and he felt that he had an obligation to go in. I might have argued that I didn't feel that he should.

He affirmed to me that he wasn't writing and that he didn't intend to hire writers, and he did make mention of the fact that he had never made much money as a writer anyway.

[25] Q Did he tell you in that telephone conversation what project he was working?

A He said that Webb had made him executive producer. I don't remember that he mentioned the project. I might have assumed it was ADAM-12, but I don't remember whether he mentioned it.

Q Did the trade paper that you made reference to refer to what projects he was working on, do you recall?

A I don't recall.

Q Do you recall which company or what company he was working for at that time?

A I assumed it was Mark 7, which is the Webb company.

Q You are referring to Jack Webb?

A Jack Webb.

Q Well, you said that you assumed.

Is that something that you assumed, or is that some knowledge you gained from the trade papers?

A Well, I don't remember the trade papers. He did mention the fact that it was Webb who made him an executive producer, so I figured he was still working for Webb.

Q Did you advise him of the possible consequences of crossing the line or working for a struck company?

A Yes, I did.

Q And can you tell us what it is that you told him?

A Well, I told him that I hoped what I had seen in the papers was not true, and I also advised him that, having talked to him and having verified the fact that he was in, I was going to have to report this and that there would [26] probably be some kind of disciplinary action.

• • • •

[ARNOLD SHANE—EXAMINATION]

[57] Q Are you knowledgeable with respect to Mr. Saunders' personal service contract with Universal City Studios or with Mark 7 Productions?

A Yes, I am.

Q And with which entity is that?

A That contract? Universal City Studios, Inc.

Q Is that an exclusive contract or are his services exclusive to Universal City Studios?

A Yes, they are.

Q Does his contract provide for writing services?

[58] A If required by Universal.

• • • •

[4] MR. KNOPF: This is a disciplinary hearing in the matter of Writers Guild of America, West, Inc., versus Frank Paris. This matter is being heard before a Trial Committee duly convened pursuant to Article X of the Constitution and By-Laws of the Writers Guild of America, West, Inc. The members of the Trial Committee are James Poe, Nate Monaster, Michael Blankfort, Emmet Lavery, Christopher Knopf, Chairman.

• • • •

[32] CAREY WILBER

called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. MENDONSA:

Q Will you please state and spell your name?

A Carey, C-a-r-e-y, Wilber, W-i-l-b-e-r.

Q Mr. Wilber, you are a member of the Writers Guild of America, West, Inc.; is that correct?

A Correct.

Q And approximately how long have you been a member of the Guild?

A About 20 years.

Q And I believe you testified in a prior case you are co-chairman of the Strike Services Committee.

A That is correct.

Q And approximately how long have you held that position?

A October, I believe.

Q October of 1972?

A Right.

Q And will you give us a brief description of your duties as they were in the month of February—make it more specific than that—a description of your duties as they were on or about February 27, 1973.

A Organizing picket lines for the studios in the event a strike was called.

Q And how did your committee or you go about that?

[33] A We have a telephone committee which called members of the Guild to give them picket assignments.

Q And did you make such calls?

A No. Under our setup, the members of the telephone committee members, gave them picket assignments. If there was any problem, any refusal to picket, these people were handed over to Miss Kay Leonard and myself to follow up on call-backs.

Q Now, directing your attention to February 27, 1973, did you on that date have a telephone conversation with a Frank Paris?

A I did.

Q And did you call him or did he call you?

A One of our telephone committee called him, there was a conflict, and I talked with him.

Q I see. And did he identify himself as Frank Paris?

A Yes.

Q And did you identify yourself?

A Yes.

Q Will you tell us what was said in that telephone conversation. What did you say to him and what did he say to you?

A First off, it was a case where he had refused to picket. I told him that he had an obligation as a member of the Guild to perform picket duties. He said that he would be unable to perform such duties, because he was going in to work in an executive capacity at Disney Studios. I [34] read him the strike rules and regulations covering these matters, specifically the obligation to picket, the penalties involved for refusal to picket, for failure to picket, and also the position of the Guild on people who crossed our picket lines in the event of a strike. Mr. Paris told me that he felt he was in an executive capacity, that he was not involved with writing, that

he had a contract with Disney Studios which he felt morally obligated to fulfill. I urged him at that time to consult with the Guild council before making an irrevocable decision, and he advised me that he had ample counsel from other sources. That was about the gist of the conversation.

Q You said you read to him the rules. May we at this time agree to incorporate into this record the Rules for the Conduct of Members During a Strike dated February 20, 1973, and the Constitution and By-Laws and the strike order that was dated March 5, as we have in prior cases?

MR. HOLTZMAN: That will be satisfactory.

MR. KNOPF: They are received.

Q BY MR. MENDONSA: Let me show you the Rules for the Conduct of Members During a Strike dated February 20, 1973. Will you tell me what specific rules you read to Mr. Paris?

A (Reading) "Rule 28: The Guild shall have authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any [35] member found guilty of refusal to perform picket duty shall be fined not less than $100 per day for each day of such refusal to perform.

"All members are prohibited—"

Article 12.

"All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer."

MR. MENDONSA: I have no further questions.

MR. KNOPF: Mr. Holtzman?

MR. HOLTZMAN: Yes.

BY MR. HOLTZMAN:

Q Mr. Carey—

MR. KNOPF: It's "Wilber."

THE WITNESS: Everybody makes that mistake.

Q BY MR. HOLTZMAN: Mr. Wilber, do you still have before you the Rules for the Conduct of Members During a Strike?

A No.

MR. MENDONSA: He does now.

Q BY MR. HOLTZMAN: Will you take a look at Rule 30 as set forth therein.

A Yes.

Q Would you read it.

[36] A (Reading) "Article 30: No member shall work with any individual, including a writer-executive, who has been suspended from Guild membership by reason of his violation of strike rules, or who has been found by the council to have violated strike rules, in the event no disciplinary action was instituted against such person."

Q Now, referring to this telephone conversation that you had with Mr. Paris on the occasion you described, you read that rule to him also at that time, did you not?

A No, I did not read that rule to him. I had a discussion with Mr. Paris about that, which I quite fervently urged him not to take this step. And I mentioned this rule, but I did not read the rule as mentioned here.

Q You told him in substance that he would be penalized to such an extent that no writer would work for him at Disney if he was disciplined by the Guild?

A I remember my exact words to him—searching my recollection now, I said, "Frank, the rules are horrendous, and I urge you not to take this step."

Q Specifically, you told them that no writer would work for him if he was disciplined?

A I told him, yes.

• • • •

[4] MR. KOPF: The hearing will come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. versus Coles Trapnell. This matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and Bylaws of the Writers Guild of America, West, Inc.

• • • •

[70] ARNOLD SHANE

called as a witness on behalf of the Respondent, testified as follows:

EXAMINATION

BY MR. SUSMAN:

Q Will you state your name for the record?

A Arnold Shane.

Q And you are employed at Universal City Studios?

A Yes, I am.

Q Briefly, what is the nature of your employment?

A I am a business affairs executive for television at Universal Television.

Q You have been for a number of years?

A Yes, I have.

Q You have seen the letter of March 6, 1973 written by Mr. Trapnell?

A Yes.

Q To your knowledge, do the facts set forth therein regard the nature of his activities at Universal?

A Yes. They were as of the dates of this letter.

Q Without repeating the content of the letter, am I correct that Mr. Trapnell performs no writing services at the studio?

A That's correct.

Q His activity basically was devoted to the [71] determination of what material crosses through the story department in television was susceptible to be purchased by Universal; is that correct?

A Yes.

Q Now, you mentioned that as of the date in the letter the statement is correct. Since that date has there been a change in his activities?

A Yes, there has. Starting last week, he was placed in charge of the overall studio story department for both features and television.

Q What does that encompass?

A It encompasses reading material and recommending the purchase for production of the material for both features and television. It also encompasses the super-

vision of all of the studio story analysts who write the synopses of material that comes into the studio.

Q And is he considered an executive at the studio?

A Yes, he is.

• • • •

Q Are you familiar with his personal service contract, Mr. Trapnell's personal service contract with Universal?

[72] A Yes, I am.

Q And does that contract give the company the right to require him to perform writing services?

A Yes.

• • • •

[3] MR. LAVERY: This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. vs. Robert Blees.

• • • •

[GENE LEVITT—EXAMINATION]

[39] Q Prior to March 6th, you stated you were producer of BARNABY JONES. What were Mr. Blees' duties as your story editor?

A I suppose they were twofold. To aid me in the selection of stories, finding stories, and shaping and forming those to our requirements, and B, doing rewriting work on stories where we had—either with—in concert [40] with the writer or after the writer had done his rewrites, doing our own polish. And further writing as dictated even by me, or by the executive producer or supervising producer.

• • • •

[84] RESPONDENT'S EXHIBIT No. 1
[P.M.R.]
[N.P.]

DECLARATION OF ROBERT BLEES

I, ROBERT BLEES, say and declare as follows:

1. I am a member of the Writers Guild of America, West, Inc. (WGA), and have been a member of such Guild since approximately 1940 . . . , and have previously served as a member of such Guild's Executive Board, and am a Founding Trustee of the WGA Pension Plan—having served in such capacity for ten years.

2. At the inception of a strike by WGA on or about March 6, 1973, I was employed by Quinn Martin (Q.M.) Productions, Inc. in the capacity of "Exectuive Story Consultant" for the "Barnaby Jones" television series, produced at Samuel Goldwyn Studios in Los Angeles, California.

3. As of March 6, 1973, I advised Q. M. Productions and WGA that during the pendency of the WGA dispute, I would refrain from any and all activities involving the writing, rewriting, or editing of scripts and stories; conversations with writers or their agents concerning professional employment matters; and any and all other activities concerned with the writing of scripts and stories, and I did, in fact refrain from such activities.

I declare under penalty of perjury that the foregoing is true and correct.

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• • • •

[4] CHAIRMAN LAVERY: Well, then, we are on. The hearing will come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Incorporated, versus John Mantley.

• • • •

[28] MR. MENDONSA: We call as our next witness Mr. Sidney Ellis.

SIDNEY ELLIS,

called as a witness by and on behalf of the Writers Guild of America, West, Inc., was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MENDONSA:

• • • •

[31] Q All right. Mr. Ellis, will you tell us now what you said to Mr. Mantley and what Mr. Mantley said to you during that telephone conversation?

MR. CURTIS: For the record, we will object to the question asking for hearsay.

MR. MENDONSA: For one thing, this is not hearsay. It is the party making the declaration, and it is a party to this proceeding and an exception to the hearsay rule.

CHAIRMAN LAVERY: Well, the Chair rules adversely to the exception taken by Mr. Curtis. Also, as an unnecessary reminder, perhaps, but in this Committee's approach as a fact-finding committee, we don't invoke too many exclusionary rules in order to get at the facts. We have a fairly fluent approach, not irrelevant approach.

Anyway, we do want to hear the witness.

THE WITNESS: Well, I can't give it to you word for word, but I told John who I was and why I was calling. The reason for the call was to ascertain if he was at his office at CBS and if he was working and whether the article that appeared in the trades quoted him correctly in that. He said that it did and he proceeded to tell me that as he had told John Furia in a long conversation a day or so before, he felt basically

that he had an obligation, a moral obligation to live up to his contract with CBS and he did deny or he did state, rather, that he had no intention of doing any writing, but that he was going to continue to produce "Gunsmoke" for CBS as his contract and his conscience [32] required.

• • • •

[73] DECLARATION OF JOHN T. MANTLEY

I, John T. Mantley, say and declare as follows:

1. I am the Executive Producer of the "Gunsmoke" television series for CBS.

2. Since March 28, 1973, when CBS was struck by the Writers Guild of America, Inc., neither I nor any of my production office staff have performed any writing functions whatsoever.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of May, 1973, at Los Angeles, California.

/s/ John T. Mantley
JOHN T. MANTLEY

• • • •

[4] MR. KNOPF: The hearing will come to order. This is a disciplinary hearing in the matter of the Writers Guild of America, West, Inc. versus David Victor. The matter is being heard before a trial committee duly convened pursuant to Article 10 of the Constitution and By-Laws of the Writers Guild of America, West, Inc.

• • • •

[88] MR. MENDONSA: I intend to prove Mr. David Victor did cross the picket lines at Universal City Studios during on or about the first week of April of 1973 and did in fact cross the lines thereafter during the month of April; that he did so in violation of this Guild Strike Order; that the Guild was on strike against Universal City Studios at that time; and that he thereby violated Sections 1, 12 and 13 of the Rules of Conduct of Members during a Strike, which related to February 20th, 1973 as stated in the charges which are a part of Trial Committee's Exhibit No. 1.

• • • •

[89] MR. MENDONSA: I will call as our first witness Betty Anderson.

BETTY ANDERSON,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

• • • •

[90] A On that morning I was performing the administrative function having to do with the card files and answering the telephone which is on that table.

Q You say "that morning." Let me direct your attention to April 10 of 1973.

[91] On or about that date, were you working at the strike headquarters?

A Yes, and I answered the telephone.

Q You did answer telephones as part of your function?

A Yes.

Q On that day, did you have occasion to have a telephone conversation with David Victor?

A Yes. Mr. Victor called around 9:00 o'clock, and he was very friendly. He said he had been out of town, and he promised to call upon his return. He got his picket assignment. He wanted to fully support the Guild strike. He had been out of town, and he had promised to call on his return to get a picket assignment, and he

was willing to fully support the Guild's strike, and that he was available for an assignment, and I asked him then if he had a preference, that when it was possible we would honor his preference for a particular place to picket.

And he said that he didn't really, that he couldn't picket this week, but he would be available the following Monday.

And I said then, "We'll be able to get in touch with you later. It will be necessary for me to check our schedules to find out where you would be most needed."

He said, "Well, you can reach me anytime. I'm in my office on the Universal Studios lot." He said, "You know, I'm preparing a picture here. I'm not writing. I'm doing some pre-production work. It's very important."

He went into quite a lot of detail about the name [92] of the picture.

Q Do you recall the name?

A No, I don't. It has sort of slipped out of my mind. Perhaps I knew I wouldn't be able to recall it later, but I didn't realize at the time that it was that important.

So I said to him, I said, "Well, Mr. Victor, the fact that you are at Universal, is that the phone number where you are asking me to call you?"

And he said, "Oh, yes. I'll be here every day."

I said, "Mr. Victor, that is in violation."

He said, "Oh, honey, you understand I'm not writing. I'm preparing a picture for production. There is a lot of pre-production stuff that has to be done."

He said, "Yes, I'm sure that I'm not writing. I want to have a picket assignment, but you have to understand that—"

• • • •

[93] MR. MENDONSA: We call as our next witness Cary Wilber.

CARY WILBER,

called as a witness on behalf of the Writers Guild, testified as follows:

EXAMINATION

BY MR. MENDONSA:

• • • •

[94] Q Directing your attention to April 10 of 1973, did you on that date have occasion to speak with Mr. David [95] Victor?

A Yes.

Q And was that conversation on the telephone?

A Yes.

Q Did you identify yourself to Mr. Victor?

A Yes.

Q Did he identify himself?

A Yes.

Q Would you tell us now what Mr. Victor said to you and what you said to him in that telephone conversation.

A As I recall, a member of the telephone committee called me over and stated that David Victor was calling from his office at Universal. She wasn't quite certain how to handle it. I spoke to Mr. Victor and told him that by being in his office he had crossed the picket line and was in violation of the strike rules.

Q And what did he say to you?

A He stated that he was in there going through preproduction on a motion picture, that he felt under the terms of his contract with Universal he was obliged to cross the picket line. He assured me that he was not doing any writing duties but that he felt that as a matter of conscience and principle he should respect his contract with Universal Studios.

Q Did you say anything more to him then?

A Yes, I warned him that he was in violation and that a complaint would have to be filed with the disciplinary committee if he continued.

• • • •

[98] MR. MENDONSA: Since we have had a portion of an affidavit, a supposed affidavit, an affidavit that is going to be submitted into a hearing, I think I should then read the memorandum with respect to that telephone conversation from Mr. Alan Griffiths. This is a memorandum addressed to the investigatory committee.

MR. MILLER: Mr. Griffiths is here, isn't he?

MR. MENDONSA: Are you going to bring Mr. Victor in to testify as to the one you just read?

MR. SMITH: I think if Mr. Mendonsa is going to read into the record a record of memorandum, that the memorandum ought to be, you know, offered as an exhibit rather than a [99] portion of it read into the record. I know that we have very loose evidentiary rules here, but—

MR. MENDONSA: Well, I am not asking for anything other than what is being granted to you. You read into the record a part of an affidavit. If you want to present the affidavit, I want to present them now. I don't care—

MR. KNOPF: I would like to hear the memo. I have no objection to it. Please read it.

MR. MENDONSA: It is addressed to Paddy Schweitzer, chairman of entries.

"Dear Paddy: David Victor rang me this morning to announce his intention of violating our strike order and going to work for a struck producer, Universal. He said he was aware that this action was in violation and would subject him to discipline by this Guild. Nevertheless, he felt obliged to adhere to his contract with Universal because of the advice he had received from the Producers Guild, of which he is a member.

"He would commence work today. He said in mitigation that he supported this Guild strike and would not perform any writing duties whatsoever. He was willing to picket, if called upon to do so, and support the Guild in any other way open to him.

• • • •

[118] ARNOLD SHANE,

called as a witness on behalf of the respondent, testified as follows:

• • • •

[129] It might be that the executive producer actually wrote or rewrote? I am not saying in this case that Mr. Victor did at this time, but generally speaking in pre-production, is it not possible that the executive producer might be rewriting a speech or rewriting a line of the development of a script?

THE WITNESS: It is possible, but I know that Mr. Victor generally doesn't work that way.

MR. BLANKFORT: So it generally is part of pre-production, but Mr. Victor doesn't engage in an examination of story with the director in pre-production?

THE WITNESS: No. That is not what I meant at all. What I meant was that Mr. Victor generally does not do the rewriting on his scripts. He develops through story conferences with writers.

MR. BLANKFORT: So do you think that reconstructing a story line—if I said to you that of a writer, I would feel that working on a plot or a structure of a story and writing it is the same as doing dialogue. Would you accept that definition?

THE WITNESS: Not necessarily. I feel that part of a producer's function comes within the exceptions of Sections A through H of the Writers Guild agreement. I don't recall which specific article it is.

• • • •

[136] EXAMINATION

BY MR. MILLER:

Q Mr. Shane, you testified that Mr. Victor was out of town until approximately April 9th from March 6th; is that correct?

A Yes.

Q Mr. Victor was on vacation?

A Yes.

Q During the week of April 9th to the best of your knowledge did Mr. Victor perform any writing services for Universal City Studios?

A He did not.

• • • •

Supreme Court, U. S.
FILED
JUL 26 1977
MICHAEL RODAK, JR., CLERK

APPENDIX (Volume II; pp. 233-595)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1121, 76-1153 & 76-1162

AMERICAN BROADCASTING COMPANIES, INC., ET AL.,
Petitioners,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI IN NO. 76-1121 FILED FEBRUARY 14, 1977
PETITION FOR CERTIORARI IN NO. 76-1153 FILED FEBRUARY 22, 1977
PETITION FOR CERTIORARI IN NO. 76-1162 FILED FEBRUARY 22, 1977
CERTIORARI GRANTED APRIL 25, 1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1121, 76-1153 & 76-1162

AMERICAN BROADCASTING COMPANIES, INC., ET AL.,
Petitioners,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Page
Chronological List of Relevant Docket Entries	1
Second Consolidated Amended Complaint	4
Answer to Second Consolidated Amended Complaint	21

Page

Excerpts from Transcript of Proceedings of hearing before Administrative Law Judge Sidney J. Barban 27

Witnesses:

Sheldon M. Mittleman
Direct Examination 28
Redirect Examination 40

Bernard Barron
Direct Examination 43
Cross Examination 55
Redirect Examination 59
Recross Examination 60
Redirect Examination 60

Sid Sheinberg
Direct Examination 60
Cross Examination 64

David Victor
Direct Examination 72

John Epstein
Direct Examination 76
Cross Examination 80
Redirect Examination 87

Melvin Sattler
Direct Examination 89

Herman Saunders
Direct Examination 92
Cross Examination 98

Jo Swerling, Jr.
Direct Examination 99
Cross Examination 103
Redirect Examination 104

Stephen Heilpern
Direct Examination 104
Cross Examination 106

David Freedman
Direct Examination 107

Frank Paris
Direct Examination 120

John Mantley
Direct Examination 123

Carl Milliken, Jr.
Direct Examination 134

Witnesses:—Continud Page

Michael Crichton
Direct Examination 135
Cross Examination 139
Redirect Examination 140

Paul King
Direct Examination 140
Cross Examination 142

Herbert Wright
Direct Examination 145
Cross Examination 150

Stanley Robertson
Direct Examination 153

Frank R. Pierson
Direct Examination 154
Redirect Examination 158

Sidney Kalcheim
Direct Examination 158

Glen L. Coon
Direct Examination 161
Cross Examination 173

Sheldon Mittleman
Direct Examination 175

Orison S. Marden
Direct Examination 177
Redirect Examination 179

Excerpts from General Counsel's Exhibit 16:

Witnesses:

Cy Chermak
Examination 180

S. S. Schweitzer
Examination 181

Robert A. Cinader
Examination 183

Donald S. Sanford
Examination 191

Samuel Steven Schweitzer
Examination 192

Arnold Shane
Examination 194

Witnesses:—Continud	Page
Harlan Ellison	
Examination	197
Lindsey Parsons, Jr.	
Examination	198
S. S. Schweitzer	
Examination	199
Hugh Benson	
Examination	201
Arnold Shane	
Examination	205
Edmund H. North	
Direct Examination	207
Cross Examination	209
William Roberts	
Direct Examination	209
Richard Moyer	
Examination	215
S. S. Schweitzer	
Examination	217
Arnold Shane	
Examination	218
Carey Wilber	
Examination	219
Arnold Shane	
Examination	223
Gene Levitt	
Examination	224
Robert Blees	
Declaration	225
Sidney Ellis	
Direct Examination	226
John T. Mantley	
Declaration	227
Betty Anderson	
Examination	228
Cary Wilber	
Examination	229
Arnold Shane	
Examination	231

General Counsel's Exhibits:	Page
2 (pages 1-4; 6-8; 18-24; 53, and 128-150)	233
3	293
4	299
5	302
6	305
7	308
8	311
9 (pages 1-4; 6-8; 18-24; 53; and 128-150)	314
12(a) (Pages 1-10 and 14-15)	381
15(a)	398
15(b)	401
15(d)	404
15(g)	407
15(i)	410
15(j)	412
15(k)	415
15(l)	418
15(m)	421
15(n)	424
15(o)	427
15(q)	430
15(r)	433
15(s)	435
15(u)	438
17(e)	441
17(h)	444
17(i)	447
18	450
19	453
20	456
23(b)	459
23(d)	461
23(e)	463
23(f)	465
23(g)	467
23(h)	469
23(i)	471
26(a)	473
26(b)	477
26(c)	515
26(d)	519
26(e)	522
26(f)	526
27	529
28	531
31	533

General Counsel's Exhibits:—Continued Page

32 534
33 536

Respondent's Exhibits:

11 537
12 542
15 544
16 548
17 550
18 554
19 555
20 557
21 558

Association's Exhibits:

2 559
3 560
4 561
4(a) 562
4(b) 564
4(c) 564a
5 565
5(a) 567
7 568
10 575
11 577

Joint Exhibit:

"Stipulation of Facts, pages 1-11 578

Respondent's brief in support of exceptions to the Administrative Law Judge's Decision 588

The Orders of the Supreme Court granitng petitions for a writ of Certiorari 593, 594, 595

The decision of the Board and the decision and judgment of the court of appeals were printed in the petitions for a writ of certiorari and thus need not be reprinted.

GC-2

WRITERS GUILD OF AMERICA THEATRICAL AND TELEVISION FILM BASIC AGREEMENT OF 1970

This agreement hereinafter referred to as "Writers Guild of America Theatrical and Television Film Basic Agreement of 1970", (herein the "Basic Agreement") executed as of the sixteenth day of June, 1970, by and between Writers Guild of America, west, Inc., and Writers Guild of America, east, Inc. (hereinafter referred to as the "Guild"), and the following producing member companies of the Association of Motion Picture and Television Producers, Inc.:

Aaron Spelling Productions, Inc.
The Alpha Corporation
American International Productions, A California Corporation
Artanis Productions, Inc.
Aubrey Schenck Enterprises, Inc.
Bing Crosby Productions, Inc.
Brien Productions, Inc.
Bristol Productions, Inc.
Charleston Enterprises Corporation
Crislaw Productions, Inc.
Columbia Pictures Industries, Inc.
Daisy Productions, Inc.
Danny Thomas Productions
Edprod Pictures, Inc.
Filmways, Inc.
Formosa Productions, Inc.
Four Star International, Inc.
Frank Ross Productions
Geoffrey Productions, Inc.
Gibraltar Productions, Inc.
Harold Hecht Company (Los Angeles)
Herbert Leonard Enterprises, Inc.
Jack Chertox Television, Inc.
The Kappa Corporation
Lawrence Turman, Inc.
Leonard Films, Inc.
Levy-Gardner-Laven Productions, Inc.
Lucille Ball Productions, Inc.
Max E. Youngstein Enterprises, Inc.
Meteor Films, Inc.
Metro-Goldwyn-Mayer Inc.
Metromedia Producers Corporation
Millfield Productions, Inc.
Mirisch Films, Inc.
Mirisch Productions, Inc.
Mirisch T.V., Inc.
Motion Pictures International, Inc.
NGC Television Inc.
Norland Productions, Inc.
Oakmont Productions, Inc.
Paramount Pictures Corporation
Pax Enterprises, Inc.
Pax Films, Inc.
Rainbow Productions, Inc.
Rastar Enterprises, Inc.
Rastar Productions, Inc.
RFB Enterprises, Inc.
R.F.D. Productions
Robert B. Radnitz Productions, Ltd.
Sheldon Leonard Productions

Sid and Marty Krofft Television Productions, Inc.
The Stanley Kramer Corporation
Stuart Millar Productions, Inc.
Summit Films, Inc.
T & L Productions, Inc.
Tandem Productions, Inc.
Thomas/Spelling Productions
Twentieth Century-Fox Film Corp.
Universal City Studios, Inc.
Walt Disney Productions
Warner Bros. Inc.
Wolper Pictures, Ltd.
Wrather Corporation

(Each hereinafter referred to as the "Company" and collectively as the "Companies"). In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

The provisions of this Basic Agreement shall be designated as follows:

(i) General provisions (herein designated "General") applicable to both theatrical employment, and purchases and to television employment and purchases, and
(ii) Provisions (herein designated "Television") applicable to television employment and purchase only, and
(iii) Provisions (herein designated "Theatrical") applicable to theatrical employment and purchases only.

Article 1 Definitions

The following terms or words used herein shall have the following meaning:

A. GENERAL

1. The term "television motion picture" (sometimes referred to in this Basic Agreement as "television film") means the entertainment portion of motion pictures, whether made on or by film, tape or otherwise and whether produced by means of motion picture cameras, electronic cameras or devices or any combination of the foregoing or any other means, methods or devices, now used or which may hereafter be adopted for the recordation of motion pictures produced primarily for exhibition by free television, excepting for the purpose of this Basic Agreement, kinescopes of live television broadcasts.

2. The term "theatrical motion picture" means motion pictures and photoplays, whether made on or by film, tape or otherwise and whether produced by means of motion picture cameras, electronic cameras, or devices or any combination of the foregoing or any other means, methods or devices now used or which may be hereafter adopted other than those motion pictures produced primarily for exhibition by free television.

3. The term "free television" means any method of exhibition by television of visual images but excluding "pay television".

4. The term "pay television" means a method of exhibition by television of a motion picture where a charge is paid by or assessed to or collected from the viewing audience, including subscription, telemeter or any other method whereby a charge is paid by the viewing audience for the right to view such motion picture.

5. The term "literary material" shall be deemed to include stories, adaptations, treatments, original treatment, scenarios, continuities, teleplays, screenplays, dialogue, scripts, sketches, plot, outlines, narrative synopses, routines, narrations and formats for use in the production of television film.

6. The term "radio rights" means the right to broadcast by radio for aural reception only and unaccompanied by any recordation, transmission or broadcast intended for visual reception.

7. "Week-to-Week Employment". Employment of a writer on a week-to-week basis is employment which, except for such restrictions as may herein elsewhere be contained, may be terminated by the Company or writer at any time.

8. The term "public domain" refers to literary material which is not subject to copyright protection in the United States.

9. A "member of the Guild in good standing" is defined as a member of the Guild who has tendered the initiation fee and periodic dues uniformly required as a condition of acquiring or retaining membership.

10. The term "writer" shall not be deemed to include any corporate or impersonal purveyor of literary material or rights therein.

11. Other than as provided in Article 14 hereof, this Basic Agreement shall not nor is it intended to cover the employment of Producers, Directors, Story Supervisors, Composers, Lyricists, or other persons employed in a bona fide non-writing capacity except to the extent that such employment consists of writing services covered under this Article 1, section B1(a)(2) and section C, 1(a)(3), nor the employment of Story Analysts, at any time prior to the expiration of this Basic Agreement, in the synopsizing of literary material, as referred to in subparagraph 1(f) of the wage scales and working conditions of the current agreement between "Producer and I.A.T.S.E. & M.P.M.O. and Local #854 thereof."

12. It is understood that this Basic Agreement shall not, nor is it intended to cover (except as provided in Article 3 and 6) contracts solely for purchase of stories, or any person who writes, whether under an optional contract or otherwise on an independent contractor basis.

13. Other terms not expressly defined in this Basic Agreement are used in their present commonly understood meaning in the Motion Picture Industry in the State of California.

B. THEATRICAL

1. Writer and Professional Writer.

a. A "writer" is a person who is:

(1) Employed by the Company to write literary material as defined herein, where the Company has the right by contract to direct the performance of personal services in writing or preparing such material or in making revisions, modifications or changes therein;

(2) employed by Company, who performs services (at Company's direction or with its consent) in writing or preparing such literary material or making revisions, modifications, or changes in such literary material regardless of whether such services are described or required in his contract of employment;

provided, however that any writing services described below performed by Producers, Directors, Story Supervisors (other than as provided in Article 14 hereof), Composers, Lyricists, or other employees, shall not be subject to this Basic Agreement and such services shall not constitute such a person a writer hereunder;

(a) Cutting for time
(b) Bridging material necessitated by cutting for time
(c) Changes in technical or stage directions
(d) Assignment of lines to other existing characters occasioned by cast changes
(e) Changes necessary to obtain continuity acceptance or legal clearance
(f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography
(g) Such changes in the course of production as are made necessary by unforseen contingencies (e.g., the elements, accidents to performers, etc.)
(h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding story or teleplay.

In addition to the foregoing in the case of a person who at the time he performs services has not received at least two screen credits for story or screenplay or both, as determined pursuant to the Theatrical Schedule A of this Basic Agreement, or Schedule A of prior Theatrical basic agreements, within a period of ten years (or has not received at least one of such credits within a period of five years) immediately prior to the rendition of such services, and who is employed solely in the capacity of the bona fide producer of a motion picture and whose employment does not include the requirement that he perform writing services, then, such person may, in addition to the above, perform the following writing services: make changes in dialogue,

narration or action, but not including significant changes in plot, story line or interrelationship of characters, and such services by such person shall not be subject to this Basic Agreement. If such person does make significant changes in plot, story line or interrelationship of characters, then such services by such person shall be subject to this Basic Agreement, except Article 6 hereof.

In addition to the foregoing, in the case of a person who at the time he performs services has received at least two such screen credits within such ten-year period (and with at least one of such credits within such five-year period) immediately prior to the rendition of such services, and who is employed solely in the capacity of the bona fide producer of a motion picture, and whose employment does not include the requirement that he perform writing services, then, if such person shall perform writing services in addition to those described in (a) through (h) above, such services by such person shall be subject to this Basic Agreement.

In addition to the foregoing, in the case of a person who at the time he performs services is employed solely in the capacity of the director of a motion picture, and whose employment does not include the requirement that he perform writing services, then, such person may, in addition to the above, perform the following writing services, make changes in dialogue, narration or action, but not including significant changes in plot, story line or interrelationship of characters, and such services by such person shall not be subject to this Basic Agreement. If such person does make significant changes in plot, story line or interrelationship of characters, then such services by such person shall be subject to this Basic Agreement, except Article 6 hereof.

In any event, if any producer or director shall receive screen credit pursuant to the provisions of the Theatrical Schedule A attached hereto or is determined by a Guild credit arbitration committee to be entitled to such credit pursuant to such Schedule

A and the Guild's credit rules relating to the quantity and quality of the contribution necessary for such credit in effect on the effective date of this Basic Agreement, then the provisions of Article 6 A 9. hereof shall apply with respect to such person.

With respect to a person employed solely as a producer-director, on the motion pictures which he directs the director paragraph above shall apply and on the motion pictures which he does not direct, the producer paragraphs above shall apply.

As used above, "producer" shall also include the bona fide executive producer of said motion picture if such executive producer is of the same industry stature and has responsibilities and functions similar to those held or exercised by the following executive producers during 1966: William Conrad, Ross Hunter, Samuel Arkoff, James H. Nicholson.

With respect to signatory Companies, no services of any kind of any executive of the same industry stature and with responsibilities and functions similar to those held by or exercised by the following executives during 1966: Walt Disney, Robert Weitman, Walter MacEwen, M. J. Frankovich and Arthur Kramer shall be covered by any provisions of this Basic Agreement, except that if any such executive shall receive screen credit pursuant to the provisions of the Theatrical Schedule A of this Basic Agreement or is determined by a Guild credit arbitration committee to be entitled to such credit pursuant to such Schedule A and the Guild's credit rules relating to the quantity and quality of the contribution necessary for such credit in effect on the effective date of this Basic Agreement, then the provisions of Article 6A 9. of this Basic Agreement shall apply with respect to such person.

7. "Rewrite" as used herein means the writing of significant changes in the plot of, story line of, or interrelationship of characters in a screenplay, submitted by the Company to a writer for the purpose of making such changes.

8. Merchandising Rights—The term "merchandising rights" means the right to manufacture and to sell or otherwise dispose of any object or thing first described in literary material written by the writer pursuant to an employment agreement, subject to this Basic Agreement, entered into on or after June 16, 1970, or acquired from a professional writer; provided such object or thing is fully described in such literary material and by such description appears to be unique and original.

The writer shall have no merchandising rights. However, if the Company exploits the merchandising rights (as defined above) in any such literary material, company shall pay to such writer an amount equal to five per cent (5%) of absolute gross (that is, monies remitted by the manufacturer on account of the exploitation of the subject merchandising rights). The provisions of this subsection 8 are also applicable to a writer who is not entitled to Separation of Rights.

C. TELEVISION

1. Writer and Professional Writer

a. A "writer" is a person:

(1) Whom the Company has engaged to write "literary material" as hereinabove defined, where the Company has the right by contract to direct the performance of personal services in writing or preparing the literary material or in making revisions, modifications or changes; or

(2) As to whom the Company has by contract the right to direct the performance of personal services in making revisions, modifications or changes in "literary material."

(3) Employed by Company, who performed services (at Company's direction or with its consent) in writing or preparing literary material or making revisions, modifications, or changes in literary material regardless of whether such services are described or required in his contract of employment; provided, however, that any writing services described below performed by Producers, Directors, Story Supervisors (other than as provided in Article 14 hereof), Composers, Lyricists, or other employees shall not be subject to this Basic Agreement and such services shall not constitute such person a writer hereunder:

(a) Cutting for time

(b) Bridging material necessitated by cutting for time

(c) Changes in technical or stage directions

(d) Assignment of lines to other existing characters occasioned by cast changes

(e) Changes necessary to obtain continuity acceptance or legal clearance

(f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography

(g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.)

(h) Instructions, directions or suggestions, whether oral or written, made to writer regarding story or teleplay

In addition to the foregoing in the case of a person who at the time he performs services has not received at least two or more screen credits for story or teleplay or both, as determined pursuant to the Television Schedule A of this Basic Agreement, or Schedule A of the previous Television basic agreements, within a period of five years prior to the rendition of such services, and who is employed solely in the capacity of the bona fide producer of a specific television program, and whose employment does not include the requirement that he perform writing services, then, such person may, in addition to the

above, perform the following writing services: make changes in dialogue, narration or action, but not including significant changes in plot, story line or interrelationship of characters, and such services by such person shall not be subject to this Basic Agreement. If such person does make significant changes in plot, story line or interrelationship of characters, then such services by such person shall be subject to this Basic Agreement, except Article 6 hereof.

In addition to the foregoing, in the case of a person who at the time he performs services has received at least two or more such television screen credits within such five-year period prior to the rendition of such services; and who is employed solely in the capacity of a bona fide producer of a specific television program, and whose employment does not include the requirement that he perform writing services in addition to those described in (a) through (h) above, such services by such person shall be subject to this Basic Agreement.

As used above, "bona fide producer of a specific television program" shall also include the bona fide executive producer of said program if such executive producer is of the same industry stature and has responsibilities and functions similar to those held or exercised by the following executive producers during the 1965-66 broadcast season: Norman Felton, Harry Ackerman, Paul Monash.

With respect to signatory Companies, no services of any kind of any executive of the same industry stature and with responsibilities and functions similar to those held by or exercised by the following executives during the 1965-66 broadcast season: Walt Disney, William Orr, Jackie Cooper, Jennings Lang, William Self, Robert Weitman, and Alan Courtney, shall be covered by any provisions of this Basic Agreement, except that if any such executive shall receive screen credit pursuant to the provisions of the Television Schedule A of this Basic Agreement or is determined by a Guild arbitration committee to be entitled to such credit pursuant to such Schedule A and the Guild's credit rules relating to the quantity

and quality of the contribution necessary for such credit in effect on the effective date of this Basic Agreement then the provisions of Article 6, subsection 9 shall apply with respect to such person.

In addition to the foregoing, in the case of a person who at the time he performs services is employed solely in the capacity of the director of a specific television program, and whose employment does not include the requirement that he perform writing services, then, such person may, in addition to the above, perform the following writing services: make changes in dialogue, narration or action, but not including significant changes in plot, story line or interrelationship of characters, and such services by such person shall not be subject to this Basic Agreement. If such person does make significant changes in plot, story line or interrelationship of characters, then such services by such person shall be subject to this Basic Agreement, except Article 6 thereof.

Article 6 Guild Shop (GENERAL)

1. Except as provided below, in both theatrical and television films each writer employed by Company on the effective date of this Basic Agreement who is then a member of the Guild in good standing shall remain a member in good standing, and each writer so employed who is not a member shall, on or before the thirtieth day following the effective date of this Basic Agreement, become and remain a member of the Guild in good standing. Each writer employed hereunder by Company after the effective date of this Basic Agreement shall not later than the thirtieth day following the beginning of his first employment, as hereinafter defined, in the motion picture and television industry, become and remain a member of the Guild in good standing.

The term "first employment" as referred to above shall mean the first such employment to which the provisions of this Basic Agreement apply as a writer for a motion picture by an employer in the motion picture and television industry, on or after the effective date of this Basic Agreement.

2. The provisions of subsection 1. of this Article 6 shall not apply

a. If a writer is not a member of the Guild in good standing at the time if his employment and although required by the provisions of his employment agreement to do so, fails or refuses to become a member of the Guild in good standing within the 30 days above mentioned, such writer, shall nevertheless be deemed to be a member in good standing, provided the Company on notice thereafter from the Guild shall pay or cause to be paid the initiation fee and dues of the writer in the manner, within the time, and subject to the provisions of subsection 5.b. hereof relating to the payment of dues; provided further that such writer shall be deemed to be a member in good standing for only the period necessary to permit him to complete the performance of his services in connection with the then current assignment. Company may use this exception only once for any particular person.

b. To a writer whom the Company is required to employ as a condition of the sale or license of material, provided that the Company or the writer shall, after notice from the Guild that the writer has not become a member in good standing as required hereunder, pay or cause to be paid to the Guild the initiation fees and dues that the writer would otherwise be required to pay hereunder during such employment, in the manner, within the time, and subject to the provisions of subsection 5.b. hereof relating to the payment of dues.

c. To a writer employed by reason of his intimate or unique knowledge concerning the subject matter of the material. Company may use this exception only once for any particular person.

However, the writers employed by the Company within the above exceptions b and c shall not exceed 10% of the total number of writers in its employ of the Company. For the purpose of such computation, if the Company has in its employ at any time less than ten (10) writers

then one of such writers so employed may fall within one of the exceptions mentioned above. Promptly following the employment of any writers claimed by the Company to be within exceptions b or c above, the Company will notify the Guild in writing of the name of the writer employed, the date of the employment agreement and the fact that the Company claims that such writer is an exception hereunder.

For the purpose of such computation a writer who is employed under an exclusive contract by a Company shall be regarded as being employed by the Company at all times during the term of such contract, including periods during which the writer may be on layoff and periods during which such contract may be suspended by reason of illness or default of the writer or otherwise. The writer shall be regarded as continuing in the employ of the Company by which he is employed regardless of the fact that his services may be loaned to another Company.

3. The term dues as used herein shall not include fines or initiation fees.

4. Promptly after request by any person designated by the Company, the Guild will admit such person to membership in the Guild upon terms and conditions not more burdensome to such person than those then applicable to other applicants. Membership shall be effective as of the date of such request. Guild agrees that during the term it will not impose any unreasonable initiation fee as a condition to admission to membership, and agrees that during the term hereof it will not impose upon its members any obligation to pay dues that do not uniformly apply to all members of the Guild.

It is agreed that the Guild shall not close its membership books or otherwise prevent any person who wishes to become or remain a writer from becoming a member of the Guild, but on the contrary (subject to the provisions hereof relating to waivers as to members suspended or expelled) will make available the privileges of membership to any and all writers employed by the Company. The Guild will reinstate or readmit to membership any writer who applies for reinstatement or readmission, after being declared to be not in good standing or after suspension, expulsion, or resignation for any reason whatsoever, provided the writer will apply for such reinstatement or readmission and with such application tender to the Guild unpaid dues permitted by law, and upon such tender the Company may employ or continue to employ such writer. Instead of readmitting or reinstating such writer, the Guild may at its option grant to the Company a waiver as to such writer, in which event, for the purpose of determining the Company's compliance with the provisions of this Article 6, such writers shall not be considered as being employed by the Company.

5. If during any time that a writer is employed by the Company under a contract of employment such writer is or becomes a member of the Guild in good standing and if such writer shall subsequently and before his employment under such contract terminates, cease to be a member of the Guild in good standing then:

a. If such writer has ceased or shall cease to be a member for any reason other than his failure to pay dues, such writer shall, for the purposes of this Basic Agreement, be deemed to remain a member of the Guild in good standing throughout the writer's employment under said contract of employment as the same may be extended or renewed pursuant to any provisions or options therein contained.

b. If he has ceased or shall cease to be a member in good standing by reason of his failure to pay dues, such writer shall, for the purposes of this Basic Agreement, be deemed to remain a member in good standing for a period of fifteen (15) days after written notice, that he has ceased to be a member in good standing for failure to pay dues, from the Guild to such writer and to the Company, and if, prior to the expiration of said fifteen (15) days' period, payment of said dues in fact due and owing and specified in said notice shall be made by the writer or the Company, then, for the purposes of this Basic Agreement, such writer shall not lose his status as a member in good standing. To the extent that it may be lawful for the Company to do so, the Com-

pany may require, as a condition of employment, that any writer become and/or remain a member of the Guild in good standing, and may also require such written consent or consents as may be necessary so that, if the Company elects, it may pay to the Guild any dues of any writer and the Company shall have the right, insofar as its obligations to the Guild and to any writer under the terms and provisions of this Basic Agreement are concerned, if it elects, to deduct the amount of such dues from any compensation then or thereafter due or to become due to the writer; provided, however, that if such payment and deduction are or shall become contrary to law, or any statute, or are declared by any court of competent jurisdiction in the State of California or by any Federal Court or the National Labor Relations Board or its General Counsel, or by any other board or individual having jurisdiction over the matter, to be in violation of any applicable law or statute and if by reason thereof the Company fails to deduct and pay to the Guild such dues, as aforesaid, and shall notify the Guild thereof in writing within the fifteen (15) days after any notice from the Guild above mentioned, then although such dues are not paid within the fifteen (15) days' period, for the purposes of this Basic Agreement such writer shall, nevertheless, be deemed to remain a member of the Guild in good standing throughout the term of the writer's assignment.

Every personal service contract of employment shall provide that if the writer fails or refuses to become or remain a member of the Guild in good standing, as above provided, the Company shall have the right at any time thereafter to terminate such employment agreement with such writer.

If the Company is required or directed by any decision of a court of competent jurisdiction or any proper governmental authority to refund to any writer, in whatsoever form the same may be recovered, any dues deducted and paid to the Guild by the Company under the

provisions of paragraph b. of this subsection 5., the Guild agrees to repay to the Company the amount of such dues so refunded. The Guild will cooperate with the Company in obtaining the necessary authorizations from writers for the payment and deduction of dues in the manner provided in paragraph 5. above.

6. The Guild will facilitate employment of its members by the Company and will at all reasonable times promptly furnish to the Company in writing information concerning the status of any of its members, and the Company shall be entitled to rely upon such information so furnished by the Guild.

7. The Guild represents and warrants that discipline, resignation, admission, reinstatement, readmission and all other matters relating to membership status will at all times during the term hereof be within the exclusive jurisdiction of the Guild; and the Guild agrees that it will exercise such jurisdiction subject to and in accordance with the provisions and intent of this Article 6 and of any other applicable provisions of this Basic Agreement.

8. It is understood that the provisions of this Article 6 shall never under any circumstances be so construed during the term of this Basic Agreement as to constitute or permit what is known as a "closed shop" or construed in any manner that will at any time deprive the Company of its right to employ or continue the employment of a writer who is not a member of the Guild in good standing, or who does not become a member of the Guild in good standing within the period prescribed in subsection 1. of this Article 6 if the Company has reasonable grounds for believing that such a membership was not available to such writer on the same terms and conditions generally applicable to other like members of the Guild, or if the Company has reasonable grounds for believing that membership in the Guild was denied, deferred, suspended or terminated for reasons other than the failure of such person to tender the applicable periodic dues uniformly required as a condition for acquiring or retaining membership in the Guild.

9. If a person who has not been listed by the Company as a writer in accordance with the provisions of

Article 3 hereof shall receive, or shall have been entitled to, screen credit of the nature mentioned in Article 1 hereof, then if within fifteen (15) days after receipt of written notice thereof from the Guild to the Company the writer or the Company shall pay or cause to be paid the dues payable to the Guild for the period during which the person performed his services in the writing of the literary material after a date 30 days from the commencement of such services, then such person shall be deemed to have been a member of the Guild in good standing during the time that he was so performing his services as a writer. For such purpose the person receiving or entitled to such credit or the Company may apportion on a reasonable basis, salary payable to such person during the period he was employed as a writer.

10. Where the Company has failed to include a writer employed by the Company on the list of names of writers to be sent to the Guild under Article 3 and where such writer's performance of writer's services has continued for more than thirty (30) days after the beginning of his first employment, the Company on notice from the Guild shall pay or casue to be paid the initiation fees and dues of the writer in the manner, within the time, and subject to the provisions of subsection 5.b. hereof relating to the payment of dues. The provisions of this paragraph shall not apply in the event the Guild gives the Company such notice prior to the expiration of such period of thirty (30) days.

Article 7 No Strike, No Lock-out Clause (General)

1. The Guild agrees that during the term hereof it will not call or engage in any strike, slowdown or stoppage of work affecting theatrical motion picture or television film production against the Company.

2. If, after the expiration or other termination of the effective terms of this Basic Agreement, the Guild shall call a strike against any Company, then each respective then current employment contract of writer members of the Guild (hereafter for convenience referred to as "members") with such Company shall be deemed automatically suspended, both as to service and compensation, while such strike is in effect, and each such member of the Guild shall incur no liability for breach of his respective employment contract by respecting such strike call, provided such member shall promptly, upon the termination of such strike, and on the demand of the Company perform as hereinafter in this paragraph provided, and the member shall be deemed to have agreed as follows:

a. That if the writer has been assigned to the writing of any material at the time any such strike is commenced, he will, after the termination of such strike and upon the request of the Company, report to the Company and perform his services in the completion of such assignment at the same salary and upon the same terms and conditions as were agreed upon prior to the commencement of said strike.

b. That he will immediately, after the termination of such strike and upon the request of the Company, execute a new contract on the same terms and conditions, and at the same salary or other compensation as provided in the employment contract which was in effect at the time the strike commenced, except that such new contract shall be for a period or periods, including options, equivalent to the unexpired term of the contract which was in effect when such strike was commenced.

c. That he will, in lieu of b., after the termination of such strike, at the option of the Company, and upon its demand, execute an agreement in writing with the Company extending the term or period of such personal service contract in effect when such strike was commenced for a period of time equal to the period of any suspension by such strike.

3. If the member shall fail to perform the foregoing, or if he shall fail actually to finish his services in the assignment mentioned in 2.a., (except by reason of his death, physical disability, or default by the Company), then the waiver of liability by the Company heretofore given shall be null and void.

4. The member further agrees that the statute of limitations as a defense to any action by the Company against the member for his failure to perform during such strike is extended by a period equivalent to the duration of such strike. If the member asserts any claim or defense by reason of the expiration of time during which he can be required to perform services by virtue of any statute (such as the seven-year statute) which claim or defense is based in whole or in part on the lapse of time during such strike, the waiver by the Company is ineffective thereupon, and the statute of limitations as to the Company's rights is waived by the member automatically.

5. The automatic suspension provisions of this Article 7 shall not affect the Company's right to sue any individual writer for breach of contract arising during the period of such strike, unless such writer shall have complied with his obligations under the provisions of this subsection 5. Nothing herein contained shall be construed to deprive the Company of its right to terminate the employment contract at any time after such member shall strike or otherwise fail or refuse to perform services.

6. The provisions of this Article 7 shall be deemed included in all employment contracts between writers and Company which are now in effect and all such employment contracts which shall be entered into during the effective term of this Basic Agreement.

7. The Guild agrees that it will take such affirmative actions as may be necessary and lawful in order to require its members to perform their respective obligations under the provisions of this Article 7.

8. Notwithstanding the expiration or other termination of the effective term of this Basic Agreement, by termination or otherwise, the provisions of this Article 7 shall be and remain in full force and effect for a period of seven (7) years following the termination of any such strike, unless this covenant be sooner terminated by the written consent of Company and Guild.

9. The Guild is a corporation. Nothing in this subsection 9. shall enlarge the liability of its officers, directors, agents, and members, this subsection 9. being

an additional limitation thereon. The Guild will not be held liable for unauthorized acts of its officers, agents, directors, or members; neither the Guild, nor its officers, directors, agents, or members not participating in the actions hereinafter mentioned, shall be liable for any strike, slow-down, or work stoppage, unless the same be authorized by the Guild in accordance with its by-laws, but the foregoing exemption of this sentence shall not apply unless the Guild upon request from the Company affected thereby shall proclaim promptly and publicly that such strike, slow-down or work stoppage is unauthorized, and follows such pronouncement within a reasonable time thereafter, if requested so to do by the Company affected, with disciplinary proceedings in accordance with its by-laws against the participants in such unauthorized action.

10. The Company agrees that it will not call or engage in any lockout of members.

11. In accordance with and to the extent required by Articles 11 and 12 of this Basic Agreement as to any matter arbitrable thereunder, the Guild has right to strike Company so long as the Company's wrongful failure to participate in Grievance and Arbitration procedures continues. Such action on the part of the Guild is not a waiver of right to compel Company to participate in Grievance and Arbitration procedures. If Company shall contest the arbitrability of such issue, such issue of arbitrability shall first be determined prior to the arbitrator's proceeding with a hearing on the merits.

Article 8 Credits for Screen Authorship—(General)

The Company agrees that credits for screen authorship shall be given only pursuant to the terms and in the manner prescribed in the respective, applicable Schedule "A's" attached hereto and by this reference incorporated herein, provided, however, that the respective, applicable provisions of such Schedule "A's" shall apply only to credits for screen authorship finally determined during the term hereof.

Article 9 Minimum Terms—(General)

The terms of this Basic Agreement are minimum terms; nothing herein contained shall prevent any writer from negotiating and contracting with any Company for better terms for the benefit of such writer than are here provided. The Guild only shall have the right to waive any of the provisions of this Basic Agreement on behalf of or with respect to any individual writer.

Article 14. Writers in Non-Writing Capacities (Television)

A. Nothing herein shall be construed to prohibit Company from concurrently contracting for the services of an individual as a writer, subject to all of the provisions of this agreement, and the same individual to render services in a capacity or capacities other than as a writer which services shall not be subject to this Basic Agreement, provided that separate compensation is stated for the services of such individual in the capacity of a writer, and provided that separate contracts are entered into for writing services for no less than applicable minimum. None of the compensation due the individual for his services in a capacity or capacities other than as a writer shall be offset or credited against any compensation due the individual for his services in his capacity as a writer. Nothing in this paragraph is to be construed to prevent contracting for the services of a writer as a writer and in other capacities under a type of agreement in which specified compensation is stated for each of the various capacities for which the individual is or may be required to render services, with an agreement that not less than a stated overall amount of compensation is guaranteed for a stated period, and under such an agreement only the services and compensation paid for the services of the individual in his capacity as a writer shall be services and compensation subject to this Basic Agreement (provided, however, as set forth above, that separate contracts are entered into for such writing services). Nothing in this paragraph is intended to modify or otherwise affect the definition of a writer as contained in Article 1C 1.a. hereof.

B. A person employed as a writer for a series whose duties include for that series interviewing other writers, suggesting story ideas or script changes to other writers, or recommending approval of material submitted by writers, shall be subject to this Basic Agreement (excluding Executives, Executive Producers, and Producers; and also excluding persons who are employed as bona fide Associate Producers, who do not perform services as a writer for the series and where the above duties of such persons are incidental to their primary duties).

For such writer, the minimum compensation shall be:

(i) 150% of the week-to-week or term minimum compensation provided for in Article 13B 7.s., using whichever rate is applicable to the type of employment used in the particular case, or

(ii) the compensation described in Article 13B 7.s. (2) (e) whichever of (i) or (ii) above is the greater,

(iii) or if such writer is employed at a per episode price, then the aggregate amounts paid for the subject episodes shall not be less than the minimum prescribed above had such writer been employed on a week-to-week or term basis for the period or aggregate of periods during which such writer works as such on the series.

THEATRICAL SCHEDULE A

THEATRICAL CREDITS

1. Credit shall be given on the screen for the screenplay authorship of feature-length photoplays and shall be worded "Screenplay By." The term 'screenplay' means the final script (as represented on the screen) with individual scenes and full dialogue, together with such prior treatment, basic adaptation, continuity, scenario, dialogue, and added dialogue as shall be used in and represent substantial contributions to the final script.

In the exceptional case where a writer has contributed to the development of the final screenplay but is not given screenplay credit hereunder, credit in the form "Adaptation By" may be given, but such credit, shall be subject to automatic credit arbitration as provided in subsection 18. of this Schedule A.

2. The term "story," as used throughout this Schedule A means all writing written substantially in whole by a writer or writers while employed by the Company, representing a contribution distinct from screenplay and consisting of basic narrative, idea, theme or outline indicating character development and action. The term "source material" means all material upon which the screenplay is based other than story as hereinabove defined, including other material on which the story is based. Credit shall be given on the screen for story authorship of feature length photoplays to the extent and in the forms provided in the following subparagraphs a. to e., inclusive.

a. When the screenplay is based upon story and upon no other source material, screen credit for a story authorship shall be given the screen writer, and shall be worded "Story By."

b. When the screenplay is based upon source material, screen credit for story authorship may be given by the Company to the source material author, and may be worded "Story By."

c. When the screenplay is based upon both story and source material and the story is substantially

new or different from the source material, credit for story authorship shall be worded "Screen Story By," which credit shall be subject to automatic credit arbitration as provided in subsection 18. of Schedule A. The Company shall not thereby be limited from giving credit to the author of source material provided such credit shall indicate the form in which it is acquired. The following examples are illustrative and not intended to cover all situations: "From a Play By," "From a Novel By," "From a Saturday Evening Post Story By," "From a Series of Articles By," "From an Unpublished Story By," "Based on a Story By," "Ernest Heminway's Old Man of the Sea," or other appropriate wording indicating the form in which it is acquired.

"Based upon a Screenplay By" is appropriate source material credit in cases in which literary material is acquired or writers are employed under circumstances in which the credit provisions of this Basic Agreement do not apply, and under contracts whereby purchaser or employer agrees to give writing credits, and if Company takes over the employment contract or acquires the material written under such contract, and subsequently employs, in relation to such material, a writer subject to this Basic Agreement.

d. When the screenplay is based upon a sequel story written by an employed writer, story credit for such sequel shall be given in the form "Story By," and the author of the source material upon which such sequel is based may be given credit "Based Upon Characters Created By," or other appropriate form of credit.

e. The Company may engage any person to write any source material (including but not limited to the source material referred to in paragraph c., above), as an independent contractor, and may guarantee source material credit to such person as above provided.

Upon the written request of a writer made prior to his acceptance of employment in connection with

a designated photoplay, or upon the written request of a then employed writer made at the time of his assignment to a designated photoplay, the Company shall notify him in writing of any then existing contractual obligation to give credit for source material in connection with such photoplay. The Company shall not be thereby limited from making subsequent contractual obligations to give source material credit, as above provided, in connection with such photoplay. Neither the existence of any form of credit obligation nor the giving of any such credit information shall relieve a writer from his obligation to render services and otherwise perform as provided in his employment agreement. A Company which furnishes a writer hereunder with inaccurate or incorrect credit information shall not be deemed to be in breach of this Basic Agreement or its employment agreement with such writer, if the Company at the time of giving such credit information believes in good faith such information is correct.

The Company shall be deemed to be contractually obligated in any of the cases above mentioned if the Company in good faith considers itself so obligated.

Nothing herein contained shall limit the Company from using and purchasing source material, from entering into agreements to give source material credit therefor, as above provided, from carrying out such credit obligations as may be therein provided.

3. Screen credit on photoplays on which one writer or a team has written both the story and the screenplay shall be worded "Written By."

If a writer is entitled to "Written By" credit on a photoplay which he also produces or directs, unless the writer objects nothing herein shall prevent according credit on the screen and/or in paid advertising in the following forms:

"Written and Produced By ————", or "Written and Directed By ————", or "Written, Produced, and Directed By ————".

4. Screen credit for screenplay will not be shared by more than two writers, except that in unusual cases, and solely as the result of arbitration, the names of three writers or the names of writers constituting two writing teams may be used. A writing team is: two writers who have been assigned at about the same time to the same script and who work together for approximately the same length of time on the script. The intention and spirit of the award of credits being to emphasize the prestige and importance of the screenplay achievement, the one, two or at most three writers, or two teams, chiefly responsible for the completed work will be the only screen writers to receive screenplay credit. Story credit will not be shared by more than two writers.

5. The limitation on the number of credits provided for in subsection 4 shall apply to all feature-length photoplays except episodic pictures (such as TALES OF MANHATTAN and IF I HAD A MILLION) and revues. A revue is a feature-length photoplay in which the story is subordinate to specialties, musical numbers or sketches, and in connection with which star or featured billing is given to the actors, singers, dancers, or musicians appearing in these separate specialties, musical numbers or sketches.

6. Unless the screenplay writing is done entirely without the collaboration of any other writer, no designation of tentative screenplay credit to a production executive shall become final or effective unless approved by a credit arbitration as herein provided, in accordance with the Guild rules for the determination of such credit.

7. When more than one writer has participated in the authorship of a photoplay, then all participants will have the right to agree unanimously among themselves as to which of them shall receive writing credits on the screen, provided that the form of credit agreed upon is in accordance with the terms of this Schedule A, and provided the agreement is reached in advance of arbitration, and provided that the form of such credit is not suggested or directed by the Company. If such unanimous agreement is communicated to the Company before a final determination of credits hereunder, the Company will accept such designation of credits, and such agreed credits shall be-

come final hereunder. The Company will confirm such agreed credits by sending notice thereof to all participants and the Guild, in the manner hereinafter provided in subsections 11. and 12. hereof.

In any case in which a foreign law or government regulation applicable to the employment of writer requires credit to be given, Company shall furnish the Guild with a copy of such law or governmental regulation together with the tentative notice of credit and the Guild agrees that credits determined shall include the minimum credit necessary to comply with such legal requirements.

8. Writing credits as finally determined hereunder shall appear on the screen on a title card immediately preceding the cards on which appear credit to the producer and the director of the photoplay, provided that the card on which appears the credit to the producer immediately precedes that of the director, and otherwise the card on which writing credits appear shall immediately precede that of the director. No other credits except source material credit, may appear on the card on which writing credits appear.

Source material credits (if they appear on the screen) and writing credits finally determined hereunder shall, subject to the foregoing, appear only in the following manner:

a. On one title card on which there appear only writing and source material credits.

b. On separate title cards on each of which there may appear any one or more of such credits, and no other credits.

c. On the main title card of the photoplay on which there may appear any one or more of such credits together with other credits.

Screen credit for the writer of the screenplay shall be accorded in the same style and size of type as that used to accord screen credit to the individual producer or director of the photoplay, whichever is larger.

Whenever source material credit, or source material and story credit given to the same writer, appears on the same title card as the screenplay credit, the screenplay

credit must be the initial credit and must occupy not less than 50% of the credit card in type at least as large in all respects as that accorded the source material credit. Wherever story credit, but no source material credit, appears on the same title card as the screenplay credit, the screenplay credit must be the intial credit and occupy not less than 60% of the card. Wherever both a source material credit and story credit given to different writers are placed on the same title card as the screenplay credit, the screenplay credit shall appear in a larger size of type on the upper 60% of such title card. Such source material credit and this story credit shall appear in a smaller size of type than that used for the screenplay credit and shall appear on the lower 40% of such title card which lower 40% of such title card shall be apportioned equally among all writers receiving such source material and story credit. Under the circumstances described in the immediately preceding sentence, the Company shall have the right to place the source material credit on another card without the limitations hereinabove imposed so long as such other card is not inserted between the screenplay credit and the director's credit. The foregoing provisions of this subsection and the preceding subsection shall not be applicable to contract commitments entered into prior to December 13, 1963 which contain terms contrary thereto.

9. A writer who has participated in the writing of the screenply, or a writer who has been employed by the Company on the story, or who has sold or licensed literary material subject to this Basic Agreement, shall for the purpose of this Basic Agreement, be considered a participant. As a participant, he shall be entitled to participate in the procedure for determination of screen credits, and in addition, in the case of a remake, any writer who has received credit either for story or screenplay in connection with the most recent production of such remake photoplay.

10. Prior to the final determination of screen credits, as provided herein, the work of participants not receiving screen credit may be publicized by the Company. After such a determination of screen credits only per-

sons receiving screen credits or source material credit may be so publicized.

11. Before the writing credits for a motion picture are finally determined (and in the case of a motion picture produced in Company's studios in the Los Angeles area, no later than three (3) business days following completion of principal photography of such motion picture, except where circumstances make it impractical), the Company will send to each participant and to the Guild concurrently a written notice which will state the Company's choice of credit on alternative basis, together with the names of all participants, their addresses last known to the Company and if a participant is then also a director or producer of the photoplay the notice will so indicate. Where the Company deems its record of participants incomplete, it may comply with the foregoing by giving notice to each writer whose name and address are furnished by the Guild within five (5) days after the Company's request for such information, in addition to giving notice to each participant shown on its own records.

The Company shall on such notice of tentative credits, for the information of the Guild and participants, state the form of any source material credit which Company intends to use in connection with the photoplay. Such credits shall not be subject to the provisions for protest and arbitration as hereinafter provided, but the Guild shall have the right to object to the form of such a credit.

At the Company's request, the Guild may, but shall not be obligated to, make a determination of screen credits and shall so notify the participants. When a Guild determination is so made, it shall be considered a final determination.

At the request of the Guild made to the Company on commencement of principal photography of such motion picture, the Company shall furnish the Guild with a list of all persons who, to the best of the Company's knowledge, are or were participants (see subsection 9, above) with respect to such motion picture. If therafter any other writer is engaged by Company to render writing services in or in connection with such motion picture during the principal photography thereof, the Company will promptly notify the Guild of that fact. If the motion picture involved is a remake of an earlier motion picture produced by Company, the list of writers to be supplied by the Company pursuant to this paragraph shall incude the name of any writer employed by the Company to render writing services with respect to the most recent prior production by Company of such earlier motion picture and who received screen credit for such writing services.

A casual or inadvertent failure by the Company to forward the notices, lists, names or other information to the Guild or persons specified at the times or places designated pursuant to this subsection 11. shall not be deemed to be a breach of this Basic Agreement.

12. The notice specified in subsection 11. hereof, will be sent by telegraph to writers outside of Los Angeles area or by telegram, messenger or special delivery mail to writers in such area. In case of remakes the Company shall not be under any obligation to send any notice to any writer contributing to the screenplay or story of the original production unless such writer received screen credit in connection with such original production.

13. The Company will keep the final determination of screen credits open until a time specified in the notice by the Company, but such time will not be earlier than six o'clock p.m. of the fifth business day following the next day after the dispatch of the notice above specified. If within the time specified, a written request to read the script has not been delivered to the Company from any of the participants, or a written protest of the tentative credits has not been delivered to the Company from any participant or from the Guild, the tentative credits shall become final. Every protest, including that of the Guild, shall state the grounds or basis thereof in the notice thereof. The Guild agrees not to use its right of protest indiscriminately. In the event of an emergency and on Company's request, the Guild may reduce such "fifth business day" period. The Guild agrees to cooperate as fully as possible in considering such requests.

14. If a request to read the script is received by the Company from a participant within the time specified in subsection 13. hereof, or if a written protest of the

tentative credits is received by the Company from a participant or the Guild within said period, the Company will withhold final determination of credits until a time to be specified by the Company which time will not be earier than one hundred and twenty (120) hours, exclusive of Sundays and holidays, after the scripts are delivered to the Guild office in Los Angeles, or one hundren and twenty (120) hours after the Guild is notified that the scripts are available at the Company's studio, whichever is earlier. In the event of an emergency and on the Company's request, the Guild may grant a reduction of such one hundred and twenty (120) hour period. The Guild agrees to cooperate as fully as possible in considering such requests.

The tentative screen credits shall become final if no protest is timely made.

15. Upon receipt of a protest or request to read the script, the Company will deliver a copy of the script to the Guild office in Los Angeles for each participant who requests it, provided that the Company shall not be required to prepare additional copies of the script, and the Company shall notify the participants and the Guild by telegraph informing them of the name of the protesting party and the new time set for final determination.

16. If a unanimous designation of credits as provided for in subsection 7. hereof or a request for arbitration as hereinafter provided is not communicated to the Company within the time limit set for the final determination of credits, the Company may make the tentative credits final.

17. Any notice specified in the foregoing pargraphs shall, unless a specified form of service thereof is otherwise provided for herein, be sent by the Company by telegraphing, mailing or delivering the same to the last known address of the writer or may be delivered to the writer personally.

18. Unless a unanimous agreement has been reached in accordance with subsection 7. hereof, any participant or the Guild, may within the period provided for in subsection 14. hereof, file with the Company at its Studio and the Guild at its Los Angeles office a written request for

arbitration of credits. In any case where automatic credit arbitration is required under this Schedule A the Guild will be deemed to have made a written request for arbitration of credits, at the time the Company submits the notice of tentative credits, and in such cases Company will immediately make available to the Guild the material as provided for under this subsection.

The Guild through its arbitration committee shall, within ten business days therofter make and advise the Company of its decision within the limitations of this Schedule A. In the event the decision of the arbitration committee is not rendered with said period, as the same may have been extended by the Company, the Company may make the tentative credits final, provided the terms and provisions of this subsection 18. have been fully complied with by the Company.

In the event of an emergency and upon the Company's request that the time for arbitration be shortened, the Guild agrees to cooperate as fully as possible. If the material is voluminous or complex, or if other circumstances beyond the control of the Guild necessitate a longer period in order to render a fair decision, and the Guild requests an extension of time for arbitration, the Company agrees to cooperate as fully as possible.

Prior to the rendition of the decision said committee may make such investigations and conduct such hearings as may seem advisable to it. Immediately upon receipt of said request for arbitration, the Company shall make available to the Guild three (3) copies of the script, and three copies of all available material written by the participants and three copes of all available source material, provided, however, that if three copies of any such material shall not be available. Company shall only be required to provide such copies as are available but in such case the time within which the committee may be required to render its decision as provided for herein shall be extended from ten days to twenty days. In addition, the Company shall cooperate with the arbitration committee to arrive at a just determination by furnishing all available information relative to the arbitration. Upon request of the arbitration committee, the Company

shall provide the committee with a copy of the cutting continuity if it is available at the time of arbitration.

The decision of the Guild arbitration committee, and any Board of Review established by the Guild in connection therewith, with respect to writing credits, in-so-far as it is rendered within the limitations of this Schedule A, shall be final, and the Company will accept and follow the designation of screen credits contained in such decision and all writers shall be bound thereby.

19. The decision of the Guild arbitration committee may be published in such media as the Guild may determine. No writer or Company shall be entitled to collect damages or shall be entitled to collect damages or shall be entitled to injunctive relief as a result of any decision of the Committee with regard to credits. In signing any contract incorporating by reference or otherwise all or part of this Basic Agreement, any writer or Company specifically waives all rights or claims against the Guild and/or its arbiters or any of them under the laws of libel or slander or otherwise with regard to proceedings before the Guild arbitration committee and any full and fair publication of the findings and/or decisions of such Committee. The Guild and any writer signing any contract incorporating by reference or otherwise or referring to this Schedule A, and any writer consenting to the procedure set forth in this Schedule A, shall not have any rights or claims of any nature against any Company growing out of or concerning any action of the Guild or its arbiters or any of them, or any determination of credits in the manner provided in this Schedule A, and all such rights or claims are hereby specifically waived.

20. In the event that after the screen credits are determined as hereinabove provided, material changes are made in the script or photoplay, either the Company or a participant and the Guild jointly may reopen credit determination by making a claim to the Guild or Company, as the case may be, within forty-eight (48) hours after completion of the writing work claimed to justify the revision of credits, in which case the procedure for determining such revised credits will be the same as that provided for the original determination of credits.

The Company agrees to make revisions in advertising material previously forwarded to the processor or publisher to reflect such redetermined credits, provided that such revisions can physically and mechanically be made prior to the closing date of such processor or publisher and at reasonable expense and provided the processor or publisher has not yet commenced work on that part of the material which the change would affect.

21. No writer shall claim credit for any participation in the screen authorship of any photoplay for which the credits are to be determined by the procedure herein provided for prior to the time when such credits have in fact actually been so determined, and no writer shall claim credits contrary to such determination.

22. In any publicity issued or released prior to the final determination of credits as herein provided, the Company may include such screenplay or screenplay and story credits as the Company may in good faith believe to be fair and truthful statement of authorship. After such final determination of credits, the Company shall not issue or release any publicity which shall state screenplay or screenplay and story authorship contrary to such determination. No casual or inadvertent breach of the foregoing shall be deemed to constitute a breach by the Company.

Writing credit, but not necessarily in the form specified in this Schedule A, shall be incuded in publicity releases issued by the Company relating to the picture when the producer and the director are mentioned. The writing credit shall also be included in screening invitations issued by the Company where the credit of the producer or director are included. Prior to a final determination of credits the Company shall include those credits which it in good faith believes to be a fair and truthful statement of authorship.

Screenplay or screenplay and story credit in accordance with the final determination of such credit will be given on any paid advertising issued anywhere in the world, provided such advertising is prepared by the Company in the Continental United States and is controlled by the Company where such advertisement is used; it being understood that in such advertising prepared

prior to final determination of screenplay and story credits, the Company shall include such screenplay or screenplay and story credit as the Company may in good faith believe to be a fair and truthful statement of authorship. After final determination of credits, the Company shall not prepare for issuance any advertising which shall state screenplay or screenplay and story authorship contrary to such final determination.

Where there is only a single writer on a project and if a paid advertisment is issued in which that writer would have received credit hereunder had there been a final determination of credit at that time, then such writer shall be given credit in such advertisement in accordane with the credit requirements of this Schedule A.

In forms of advertising covered hereunder the names of the individual writers accorded screenplay or screenplay and story credit for a photoplay will appear in the same size and style of type as that in which the name of either the individual producer of the photoplay or, the director of the photoplay shall appear in such advertising, whichever is larger. Provided, however, that:

a. If three (3) or more writers share screenplay credit, then the Company shall not be required to use, for the advertising credit to which such three (3) or more writers are entitled, an area in excess of the minimum area that would be occupied by the names of the first two (2) of such writers, if only such first two (2) writers were entitled to share screenplay credit; it being understood that for such purpose the Company may diminish height of the type in which the names of the three (3) or more writers appear in addition to narrowing from side to side the names of such three (3) or more writers; it being further understood that for the purpose of determining which of the writers are the first two (2), the order in which such writers appear in the notification of the Guild's determination reached in its credit arbitration proceedings shall control; and

b. Where a writer entitled to screenplay credit is also entitled to credit as the director and/or producer of the photoplay, then the name of such writer need

only be mentioned once in such advertising, provided, however, that he receives credit as a writer, provided further that the order of credit as between writer, producer and director shall be the same as the order with respect to which such credits are given on the screen; and

c. In giving such credit on twenty-four (24) sheets, the names of the individual writers shall in no event appear in type ess than 3-½ inches in height or if the screenplay or story credit is shared by more than two (2), in type less than 2-½ inches in height; and

d. In giving such credit in forms of advertising covered hereunder, other than on twenty-four (24) sheets the names of the individual writers shall in no event appear in type of a height less than 15% of the height of type used for the title of the photoplay, or if there are two (2) titles of the photoplay, the larger title of the photoplay. Company may seek a waiver of the double billing provision, in particular cases as the "Beau Geste" ads and the Guild will not unreasonably withhold such waivers.

In all cases the location of the credit accorded to any writer under this subsection 22 shall be discretionary with the Company.

Where the title of the photoplay is in letters of varying sizes, the percentage above referred to shall be based on not less than the average size of all the letters in such title.

The foregoing obligation to accord advertising credit shall be limited to screenplay or screenplay and story credit and shall not apply:

(1) To group advertising, i.e., where more than one (1) photoplay is advertised; provided, however, that with respect to this exception and the following "teaser" exception, if the individual producer or individual director is mentioned the writer shall also be mentioned, unless no writer is assigned.

(2) To so-called "teaser" advertising;

(3) To advertisements less than eight column inches in size, but if the names of two or more persons who are the producer and director are mentioned the writer shall also be mentioned;
(4) To "trailer" advertising, except where the individual producer or director is mentioned;
(5) Other advertising on the radio or television;
(6) Where credit is given neither to the individual producer nor director of the photoplay;
(7) To special advertising relating only to the source material on which the picture is based, or author thereof, any member or members of the cast, the director, individual producer, or other personnel concerned in its production, or similar matters.

Advertising shall be deemed to have been prepared hereunder when the Company has forwarded the finished copy therefor to the processor or publisher. The Company agrees, however, to revise advertising prepared prior to the final determination of credits so as to show the screenplay or screenplay and story credit as finally determined, if such revision can physically and mechanically be made prior to the closing date of such processor or publisher and at reasonable expense, and provided the processor or publisher has not yet commenced work on that part of the material which the change would affect.

The Company shall require that all writing credits as they appear on the screen appear in any published version of the whole or substantial part of a picture script, and in any novel based on the screenplay, provided that with respect to any novel based on such screenplay the credit shall indicate that such novel is based on such screenplay. Such writing credit shall appear on the title page in the same size and style of type used for the writer of the novel. If the name of the writer of the novel appears on the cover the "screenplay" or "written by" credit shall also appear on the cover in the same size and style of type as the writer of the novel, provided, however, that the writing credit need not so appear if the writer of the screenplay is the writer of the novel. The contract with the publisher shall provide that this provision is for that express benefit of the writer and the Guild, and that the publisher will comply with such requirements. But the failure of a publisher to comply with any of such requirements shall not constitute a breach by the Company.

In connection with the radio or television broadcast of a half-hour or more in length, the whole or nearly the whole of the entertainment portion of which consists of the adaptation of a screenplay or substantial part thereof, the screenplay or screenplay and story credit as it appears on the screen shall be given either orally or visually.

Where the major writing contribution to a photoplay is in the form of narration, credit for such narration shall be given and worded in the following form: "narration written by." When a narration credit is given in lieu of a screenplay credit on any photoplay, then such narration credit shall be subject to all of the rights and limitations as are provided in this subsection 22. with respect to screenplay credit.

If hereafter the Company distributes or licenses the distribution of a souvenir program or theatrical program of a motion picture hereunder, or a phonograph record or phonograph album made from the sound track of a motion picture hereunder, and the individual producer or director of such picture is named in his capacity as such in such program or on the liner, cover or jacket of such album or records, then the writer shall also be named. The size of such credit as specified under this Schedule A shall be related to the size of the title as it is used in the listing of credit for such picture on such program, liner, cover or jacket.

If in giving credits with relation to a product, the Company gives a "produced by" and also a "directed by" credit then Company shall require the writer's credits to be given in accordance with the provisions of this Schedule A. The failure of a third party to comply with such requirement shall not constitute a breach by Company.

Where the Company supplies written handouts to reviewers and critics it will list writing credits, if they have theretofore been determined.

No casual or inadvertent breach of any of the foregoing shall be deemed to constitute a default, or a breach by the Company of this Basic Agreement.

23. In connection with "sneak" previews before the first general release of a photoplay in the United States, the Company shall give such screenplay or screenplay and story credits as the Company may in good faith believe to be a fair and truthful statement of authorship, but it shall be the obligation of the Company in good faith to have such credit determined prior to such sneak previews; and there shall be no other preview or theatrical showings of any kind except sneak previews, until correct writing credit has been determined as herein provided and included in the main title.

24. The provisions of this Schedule A shall govern the determination of writing credits for shorts (as defined in the Basic Agreement) based upon written scripts, except that:

a. Such writing credits shall appear in forms selected by the Company. In this connection, the Company agrees to use forms of credit which represent a fair and truthful statement of authorship.

b. The location of screen credit shall be discretionary with the Company and such credit may appear on a card with other credits.

c. The right of protest shall be limited to participants. Protests shall be directed only to improper or untruthful statements of the facts of authorship, rather than to the form in which such authorship is stated.

d. The period of time specified in paragraph N hereof shall be forty-eight (48) hours in place of one hundred and twenty (120) hours.

e. The period of time specified in paragraph R shall be three (3) business days in place of ten (10) business days, and the arbitration decision shall not affect the form of the writing credit.

f. The provisions of subsection 22. requiring the giving advertising credit, shall not apply to shorts, but if such writing credits are advertised, they shall be a fair and truthful statement of authorship.

25. In connection with the sale, assignment, or licensing of any literary material or rights therein, which material is subject to the credit provisions of this Schedule, Company shall obtain an acknowledgment in writing that the purchaser, assignee or licensee, as the case may be, will abide by all of the obligations incurred to writers by Company under the terms and provisions of this Schedule A. Upon the execution of such an acknowledgment, Company shall be considered to have fully complied hereunder and thereupon shall be relieved of all obligations under this Schdeule A, with respect to such material or rights therein, as the case may be.

26. a. Company will submit to the office of the Guild, 8955 Beverly Boulevard, Los Angeles, California 90048, attention of its Executive Director, a copy of the initial and subsequent campaign advertising material, prior to the issuance or distribution of such advertising material. If at the time of such submission, the Company has the copy of the souvenir program, theatrical program, liner, cover or jacket referred to in subsection 22. above or the copy of the title and cover page of the novelization, referred to in subsection 22, above, the Company will also furnish such copy to the Guild at such time. If the exigencies of time so require, Company may comply with the above by submitting such advertising material to the office of the Writer's Guild of America, East, Inc., 22 West 48th Street, New York 36, New York, Attention of its Executive Director. If within twenty-four (24) hours after such submission in Los Angeles or if within thirty-six (36) hours after such submission in New York the Guild protests by telegram delivered (collect if desired) to the Company, that such advertising material does not conform to the provisions of this Schedule A, subsection 22. above, then the Guild may, within twenty-four (24) hours after making such protest, submit the dispute to arbitration under this subsection 26.

The arbitrator shall make his decision and deliver it to the respective offices of the Company and Guild within twenty-four (24) hours after such submission to arbitration.

The arbitrator shall be selected in accordance with the following procedure. There shall be a panel of ten (10) arbitrators designated as Arbitrators Number 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, respectively. The first such arbitration shall be submitted to Arbitrator Number 1, the second such arbitration (or the first such arbitration if Arbitrator Number 1 is unavailable therefor) shall be submitted to Arbitrator Number 2, and so on in rotation. The initial panel of arbitrators is:

Ben Aaaron	Arbitrator Number 1
Sidney Justin	Arbitrator Number 2
Dean Richard Maxwell	Arbitrator Number 3
Addison Mueller	Arbitrator Number 4
Seymour Bricker	Arbitrator Number 5
Orrin B. Evans	Arbitrator Number 6
Harry Keaton	Arbitrator Number 7
Roger Davis	Arbitrator Number 8
Leon Kaplan	Arbitrator Number 9
Walter Bruington	Arbitrator Number 10

The arbitration shall be held in Los Angeles, California. The cost of such arbitration shall be borne equally by the Company and the Guild. The Company and Guild shall each bear its own attorneys' fees.

If the arbitrator decides that the Guild's protest is valid, he must designate in what respect such advertising material does not conform to the provisions of this Schedule A, subsection 22. above. This shall be the limit of the arbitrator's authority. The decision of the arbitrator shall be binding upon the Company, the Guild, and the writer or writers involved. Company shall not issue any such advertising material which would violate such decision.

It is hereby agreed that if the arbitrator in any arbitration under the provisions of this subsection 26. does not make his decision and deliver it to the respective offices of the Company and Guild within 24 hours after the dispute has been submitted to him under this subsection 26., then, at any time thereafter prior to the

making and delivering of such decision, either the Guild or the Company may elect to remove the dispute from such arbitrator and re-submit it to the next arbitrator in rotation. If so re-submitted, such next arbitrator in rotation shall make his decision and deliver it to the respective offices of the Company and Guild within 24 hours after such re-submission. The aforesaid election and re-submission shall be exercised and effected by written notice by the Guild or the Company, as they case may be, to the other party. If the first arbitrator shall make and deliver his decision after the expiration of 24 hours after the dispute has been submitted to him and prior to the re-submission of the dispute to the next arbitrator in rotation as aforesaid, such decision shall have the same effect as though it had been made and delivered by the first arbitrator within 24 hours after the original submission of the dispute to him.

If the Guild fails to submit its protest in the manner and within the time period specified above, or if the Guild fails to submit the dispute to aribtration in the manner and within the time period specified above, then in either of such events the Guild shall be conclusively deemed to have approved such advertising material and such approval shall be binding upon the Guild and the writer or writers involved. The Company shall not issue or distribute any advertising material prior to the expiration of the period within which the Guild may protest nor in the event of a protest by Guild (submitted in the manner and within the time period specified above) prior to the expiration of (i) seventy-two (72) hours after such advertising material has first been submitted as aforesaid by Company to the Guild in Los Angeles or (ii) eight-four (84) hours after such advertising material has first been submitted as aforesaid by Company to the Guild in New York, as the case may be.

In determining any twenty-four (24) or thirty-six (36) hour period referred to above in this subsection 26 a., there shall be excluded Saturdays, Sundays, and the six holidays recognized in the motion picture industry, to-wit: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

Time is of the essence as to all of the provisions of this subsection 26.

b. Company will forward, wherever practical, by Air Mail, to the Guild, to the attention of its Executive Director, a copy of each of its press books immediately upon its publication and before its general distribution. The present address of the Guild is 8955 Beverly Boulevard, Los Angeles, California 90048.

Such press books shall conform to the provisions of this Schedule A, subsection 22., above.

The Guild shall send a written answer to the Company immediately upon receipt of the Company's press book. If Company does not receive such an answer from the Guild within six days from the time the Company has sent the press book to the Guild, the Guild shall be considered to have approved the press book, and such approval shall be binding upon the Guild and the writer or writers involved. If within such six days the Guild should protest to the Company that any advertising contained in such press book neither previously approved as part of initial advertising material nor as part of subsequent advertising material, does not conform with the advertising provisions quoted above, the Guild and the Company shall appoint a joint committee which shall immediately determine the validity of the Guild's protest. If the committee determines it is a valid protest, it may specify the corrections, if any, necessary to conform the advertising with the above mentioned advertising provisions.

27. If the Company shall sell or license the so-called stage presentation rights to a screenplay with respect to which a writer has received a "written by," "story by," or "screen story by" screen credit, then Company shall provide in the contract of sale or in the license that the writer shall be accorded appropriate credit reflecting such screen credit in (1) the program for the stage presentation based upon such screenplay, (2) newspaper advertising of one-half page or larger for the Broadway showings of such stage presentation, and (3) billboards and lobby displays for such stage presentations, but only

if general credits are also accorded in such programs, newspaper advertising, lobby displays, and billboards, e.g., director credit, stage play writer credit, producer credit, choreographer credit, and the like. The failure of the purchaser or licensee of the stage presentation rights to comply with such contractual requirements shall not constitute a breach of this agreement by the Company.

28a. Notwithstanding any other provision of this Schedule A, but subject to the provisions of subsection 28d. below, if the individual producer or director is accorded a "production" or "presentation" type of credit, such as "A Sam Jones Production" or "A Sam Jones Picture" or "A Sam Jones Presentation," on the screen (wherever such credit may appear on the screen other than in the position where such individual producer or director credit would normally appear pursuant to this Schedule A), in advertising (wherever such credit in advertising may appear), such "production" or "presentation" type of credit may be accorded in a different style and/or a different size (whether larger or smaller) of type than used to accord credit to the writer of the screenplay, subject to the following:

(1) If such "production" or "presentation" type credit on the screen is in such different style or different size of type, it shall not be placed on the screen between the card according credit to the writer of the screenplay and the card according credit to the director of the photoplay.

(2) If such "production" or "presentation" type credit is used more than once in any advertisement and appears in larger size type than that accorded to the writer of the screenplay in such advertisement, it may not be placed on the same line as such writer's credit in such advertisement.

28b. Subject only to the provisions expressly relating thereto contained in this subsection 28, the matter of "production" or "presentation" type credit shall not be governed by this Basic Agreement; it being agreed that the Company may accord such "production" or "presentation" type credit as it may see fit.

28c. The obligation under subsection 22. of this Schedule A to mention the writer in group advertising or so called "teaser advertising or trailer advertising" where the individual producer or director is mentioned shall not apply if such mention of the individual producer or director is a "production" or "presentation" type credit.

28d. The provisions of a. b. and c. of this subsection 28. are modified to the extent required by the following:

Wherever a single presentation or production credit is accorded to any individual or individuals in advertising, the writer or writers who are entitled to credit on the screen pursuant to the provisions of this Schedule A shall receive credit in such advertising in type size at least 20% of the size of the type of the main title or 50% of the size of the type of the production or presentation credit, whichever is greater, as such title or credit appears on the advertising involved. If more than one such presentation or production credit is accorded to any individual or individuals, then the size of the writing credits shall be increased by an additional 5% of the main title for each such additional presentation or production credit (e.g., a total of 25% for two, 30% for three), or shall be in 50% of the size of the largest of such presentation or production credits, whichever is larger.

If two or more names are used on one line in one such presentation or production credit it will, nevertheless, count as one presentation or production credit (e.g., "A John Jones-Bob Brown Presentation"; but not "A John Jones Production of a Bob Brown Presentation").

The credit accorded to the author of the source material is not subject to the restrictions of this subsection and shall not be considered a "production" or "presentation" credit.

All credit requirements of existing contracts or appropriate credits contained in copy prepared prior to December 13, 1966, which conflict with the foregoing provisions shall control.

The provisions hereof shall further not apply to impersonal corporate presentation or production credits where the corporate name is wholly impersonal such as "Columbia Pictures Corp. presents," and shall further not apply to the names of any distributing company, whether or not impersonal, including Walt Disney Productions.

The foregoing provisions shall not apply to subparagraphs (1), (2), (4), (5), and (6) of subsection 22d. of this Schedule A.

29. On the request of either party for modification of this Schedule A on the ground of hardship in the application of any of its provisions, the other party agrees to meet and negotiate with respect to changes to eliminate such claimed hardships.

30. Where used in this Schedule A, the term "writer" or "employed writer" shall have the same meaning as provided in Article 1 B.1.a. of the Basic Agreement.

TELEVISION SCHEDULE A

TELEVISION CREDITS

1. Credit shall be given on the screen for the authorship of stories and teleplays and shall be worded "Teleplay by", or "Story by", or "Written by" (for story and teleplay) or, in the case of variety and audience participation shows only, "Written by", or "Special material by", as the case may be. The term "Teleplay" means the script as produced on the television screen or as shown in its final form, by whatever means the medium may employ. In the exceptional case where a writer has contributed to the development of the final teleplay but is not given teleplay credit hereunder, credit in the form "Adaptation by" may be given, but such credit shall be subject to automatic credit arbitration as provided in subsection 17. of Schedule A, Television.

If a writer is entitled to "Written by" credit on a television film which he also produces or directs, unless the writer objects nothing herein shall prevent according credit on the screen and/or in paid advertising in the following forms:

"Written and Produced By ————", or Written and Directed By ————", or "Written, Produced, and Directed By ————".

2. The term "Story" means all writing written substantially in whole by a writer or writers as hereinbefore defined, representing a contribution distinct from Teleplay and consisting of basic narrative, idea, theme or outline indicating character development and action. The term "source material" means all material upon which a teleplay is based other than the story, as hereinabove defined, including other material on which the story is based. Credit shall be given for story authorship of teleplays to the extent and in the forms provided in the following paragraph a. to e. inclusive:

a. When a teleplay is based upon story and upon no other source material, credit for story authorship shall be given to the television writer and shall be worded, "Story By."

b. When the teleplay is based upon source material, no story authorship credit may be given to the television writer (except pursuant to paragraph c. and d. below) but, subject to contractual commitments in effect on June 19, 1960 with source material authors, the source material author may not be given "Story by" credit, it being understood and agreed, however, that the company may give to the source material author any appropriate credit other than the two words "Story by", and that the credit given to source material authors may include, but shall not be limited to, the source material credits referred to in paragraph c. below.

c. When the teleplay is based upon both story and source material and the story is substantially new or different from the source material, credit for story authorship shall be worded, "Television Story by", which credit shall be subject to automatic credit arbitration as provided in subsection 17. of this Schedule A. The Company shall not thereby be limited from giving credit to the author of source material provided such credit shall indicate the form in which it is acquired, such as, for example, "From a play by", "From a novel by", "From a radio play by", "From a Saturday Evening Post story by", "From a series of articles by", "From an unpublished story by", "Based upon a short story by", or other appropriate wording.

d. Where the teleplay is based upon a sequel story, credit for such sequel story shall be given in the form "Story by" and the author of the source material upon which such sequel is based may be given credit, "Based upon characters created by", or other appropriate form of credit. If the source material is in the form of a format or characters, then the source material credit may be given in the following forms: "From the format by", or "Characters created by".

e. Upon the written request of a writer made prior to his acceptance of employment in connection with a designated program or upon the written request of a then employed writer at the time of his

assignment to a designated program, the Company shall notify him in writing of any then existing contractual obligations to give credit for source material in connection with such program. The Company shall not thereby be limited from making subsequent contractual obligations to give source material credit as above provided in connection with such program. Neither the existence of any form of credit obligation nor the giving of any such credit information shall relieve a writer from his obligation to render services and otherwise perform as provided in his employment agreement. A Company which furnishes a writer hereunder with inaccurate or incorrect information shall not be deemed to be in breach of this Basic Agreement or its employment agreement with such writer if the Company at the time of giving such credit information believes in good faith such information is correct.

The Company shall be deemed to be contractually obligated in any of the cases above mentioned if the Company in good gaith considers itself so obligated.

Nothing herein contained shall limit the Company from using and purchasing source material, from entering into agreements to give source material credit therefor, as above provided, and from carrying out such credit obligations as may be therein provided.

In the case of a Variety or Audience Participation program on film where a writer has contributed material and is not otherwise entitled to be included in the "Written by" credit customarily shared by such writers, additional credit may be given for such material in the form "Special Material by". Writers of Variety and Audience Participation Shows shall be deemed included under all the provisions of this Schedule A, the same as writers of dramatic programs despite the fact that only "Story" and "Teleplay" are hereinafter referred to, and when credits for Variety or Audience Participation Shows are involved hereunder the terms "Written by" and "Special Material by" shall be deemed included whenever the terms "Story by" and "Teleplay by" appear.

3. Screen credit for teleplay will not be shared by more than two (2) writers, except that in unusual cases, and solely as the result of Guild arbitration provided hereunder, the names of three (3) writers or the names of two (2) writing teams may be used. A writing team for the purpose of this Schedule A only shall be deemed to be two writers (excluding production executives) who have been assigned at about the same time to the same script and who work together for approximately the same length of time on the script. The same limitation shall apply to screen credit for story authorship by writers hereunder.

4. The limitation as to the number of writers receiving credit provided for in subsection 3. shall apply to all teleplays except multiple-story teleplays, revues, Variety and Audience Participation shows.

5. Unless the writing of the story and/or teleplay is done entirely without the collaboration of any other writer, no story or teleplay credit to a production executive shall become final or effective unless approved by a credit arbitration as herein provided, in accordance with the Guild rules for the determination of such credit. Such credit arbitration, however, shall be without prejudice to the Company's position in any arbitration relating to payment pursuant to Article 13B.7c. A production executive for the purpose hereof shall be defined as any employee of Company customarily hired for or engaging in activities considered part of the managerial phase of company's business activities. If Company shall claim that a writer has been assigned to write a teleplay based upon a story composed or created by a production executive, the story and teleplay shall be subject to an automatic arbitration pursuant to the provisions of this Schedule A.

6. When more than one (1) writer has participated in the authorship of a story and/or teleplay, then all participants will have the right to agree unanimously among themselves as to which of them shall receive writing credits on the television screen, provided that the form of credit agreed upon shall be in accordance with the terms of this Credits schedule, and provided further the agreement is reached in advance of arbitration and the

form of such credit is not suggested or directed by the Company. If such unanimous agreement is communicated to the company before the final determination of credits hereunder, the company will accept such designation of credits, and such agreed credits shall become final hereunder. The company will confirm such agreed credits by sending notice thereof to all participants and to the Guild in the manner provided in this Schedule, subsections 10.-11. In no case shall a writer grant to another writer, or accept for himself, credit which is not properly earned.

7. Writing credit, required under the provisions of this Schedule A and as finally determined hereunder, shall appear on a separate card or cards on the television screen subject to the following conditions:

a. Writing credit (other than Source Material credit) may appear on the same card on which appears the title of the particular episode, but in no event in size of type less than 30% of the size of the title; or

b. Writing credit, including Source Material credit, if given, may appear on a separate card or cards immediately following the title card of the particular episode; or

c. Writing credit, including Source Material credit, may appear immediately prior to or following immediately after the director's credit. Writing credits placed pursuant to this subparagraph c. shall not be more than the second personal credit prior to the beginning or subsequent to the end of of the teleplay as the case may be. For this purpose, however, if Source material credit appears on a separate card from the other writing credits these two separate cards immediately succeeding each other shall count as one credit. Commercials or a credit to the production company shall not be deemed to be a "personal credit" for the purposes of this provision.

d. Credit for Anthology Series. With respect to anthology series only, the company shall give the writing credits in either of the positions set forth in a. or b. above unless the initial sponsor of the

series, having the right to to so pursuant to its agreement with the Company, requires the Company to refrain from placing the credit in either of such positions. In such case, however, the Company shall place the writing credits as provided in c. above.

e. The credit given to a television writer or writers pursuant to this Schedule A shall precede (but need not immediately precede) source material credit except that

(1) the obligation imposed by this sentence should be subject to contractual commitments, heretofore or hereafter entered into by the Company with any source material author, requiring that source material credit precede television writing credit;

(2) the Company shall in any event have the right to give precedence to source material credit if the source material author's name has marquee value.

For purposes of illustration, a few examples of names having marquee value are: Kathleen Norris, Paddy Chayefsky, Ernest Hemingway, Erle Stanley Gardner, George Axelrod, Ogden Nash and John Van Druten.

If roller type credits are used, the Company in lieu of the use of a separate card shall set the writing credits in such fashion that when they are centered on the screen, no other credit shall be visible.

Source Material credit may be given on the same card on which other writing credits appear provided that writing credit (other than Source Material credit) shall be the first credit appearing on such card and provided further that the Source Material credit shall not occupy more than 40% of the space on such card and is not displayed more prominently than the other writing credits appearing thereon; provided, however, that this provision shall be subject to and not affect any individual personal service agreement in effect on March 18, 1957. In no event, however, shall Source Material credit be included on the card on which the other writing credits appear with the title of the particular episode.

Teleplay credit shall precede story credit, it being understood that if both are on the same card, teleplay credit shall be the first credit.

8. A Company shall not enter into any contract to give credit to any writer or writers hereunder for reasons of the writer's prestige or for any reasons other than earned credit, and writing credit for any writer or writers shall be assigned solely on the basis of actual contribution to the story or teleplay as determined in the event of question by the Credits Arbitration machinery of the Guild.

9. The Guild shall set up and maintain a record and listing of credits comparable to the Bulletin of the Academy of Motion Picture Arts and Sciences for the benefit of writers engaged in writing for television. Any participant in the writing of a story for television or in the writing of a teleplay or any other material which shall appear on the television screen, whose contribution is deemed insufficient to warrant visual television screen credit, shall be eligible to have the nature of his contribution recorded in the aforementioned Bulletin and be made available to such writer for exploitation purposes, provided, however, that the final decision as to his contribution and what credit he shall receive and where, in the event of question, rests solely with the arbitration machinery of the Guild. Company shall be under no obligation with respect to the establishment or maintenance of any such records or listings.

10. A writer who has participated in the writing of the teleplay or of the story (other than Source Material) with respect thereto and, in the case of a remake, any writer who has received credit for story (other than Source Material) or teleplay in connection with the most recent production of such remade television film shall, for the purposes of this Basic Agreement, be considered a participant. As a participant, he shall be entitled to participate in the procedure for determination of writing credits.

11. Before the writing credits are finally determined, the Company will send concurrently to each participant and to the Guild written notice, which will state the Company's choice of credits on a tentative basis, together

with the names of all participants and their addresses last known to the Company. Where the Company deems its record of participants incomplete, it may comply with the foregoing by giving notice to each writer whose name and address are furnished by the Guild within two (2) days after the Company's request for such information, in addition to giving notice to each participant shown in its own records.

The Company shall on such notice of tentative credits, for the information of the Guild and participants, state the form of any source material credit which the company intends to use in connection with the photoplay. Such credits shall not be subject to protest and arbitration as hereinafter provided but the Guild shall have the right to object to the form of such credit.

At the Company's request, the Guild may, but shall not be obligated to, make a tentative determination of screen credits and send out the notice.

12. The notice specified in subsection 11. hereof, will be sent by telegram to writers outside of Los Angeles or New York area, depending on the place of production, or by telegram, messenger or special delivery mail to writers in such areas. No notice will be sent to writers outside of the United States or writers who have not filed a forwarding address with the Company. In case of remakes the Company shall not be under any obligation to send any notice to any writer contributing to the teleplay or story of the original production, unless the writer has received credit.

13. The Company will keep the final determination of screen credits open until a time specified in the notice by the Company but such time will not be earlier than six o'clock p.m. of the next business day following the next day after the dispatch of the notice above specified. If within the time specified, a written protest of the tentative credits has not been delivered to the Company from any participant or from the Guild, the tentative credits shall become final. Every protest, including that of the Guild, shall state the grounds or basis therefore in the notice thereof. The Guild agrees not to use its right of protest indiscriminately.

14. If a written protest of the tentative credits is received by the Company from a participant or the Guild within said period, the Company will withhold final determination of credits until time to be specified by the Company which time will not be earlier than one hundred twenty (120) hours after the Company delivers to the Guild, all of the scripts involved.

In any case where the Guild is required to read more than (4) scripts pursuant to a protest hereunder, the Company shall be required to add to the one hundred twenty (120) hours above provided a period of twenty-four (24) hours for each additional script or fraction thereof.

If the material is voluminous or complex, or if other circumstances beyond the control of the Guild necessitate a longer period in order to render a fair decision, and the Guild requests an extension of time for arbitration, the Company agrees to cooperate wherever practicable.

15. Upon receipt of a protest, the Company will deliver three (3) copies of the final script and three (3) copies of all material written by the participants and three (3) copies of all available source material to the Guild offices in Los Angeles or New York and the Company shall notify the participants and the Guild by telegram informing them of the name of the protesting party and the new time set for final determination, provided that if three (3) copies of all the material cannot be provided the arbitration period is to be extended from one hundred and twenty (120) hours to five (5) business days.

16. Any notice specified in the foregoing paragraphs shall, unless a specified form of service thereof is otherwise provided for herein, be sent by the Company be telegraphing, mailing or delivering the same to the last known address of the writer or may be delivered to the writer personally, and to the Guild at the last known address of the Guild in Los Angeles or New York.

17. Unless a unanimous agreement has been reached in accordance with subsection 6, hereof, any participant or the Guild may within the period provided for in sub-

section 13. hereof, file with the Company at its Studio and the Guild at is Los Angeles or New York office, as the case may be, a written request for arbitration of credits. In any case where automatic credit arbitration is required under this Schedule A, the Guild will be deemed to have made a written request for arbitration of credits at the time the Company submits the notice of tentative credits and in such case the Company will immediatey make available to the Guild the material as provided for under subsection 15. of this Schedule A. The Guild through its arbitration committee shall, within the time limit specified by the Company make and advise the Company of its decision within the limitations of this Schedule A. In the event the decision of the arbitration committee is not rendered within said period, as the same may have been extended by the Company, the Company may make the tentative credits final, provided the terms and provisions of this Schedule have been fully complied with by the Company.

Prior to the rendition of the decision, said committee may make such investigations and conduct such hearings as may seem advisable to it. The Company shall cooperate with the arbitration committee to arrive at a just determination by furnishing all available information relative to that arbitration. Upon request of the arbitration committee, the Company shall provide the committee with a copy of the cutting continuity if it is available at the time of arbitration.

The decision of the Guild arbitration committee with respect to writing credits, including any Board of Review established in connection therewith, insofar as it is rendered within the limitations of this paragraph shall be final, and the Company will accept and follow the designation of screen credits contained in such decision and all writers shall be bound thereby.

18. The decision of the Guild arbitration committee may be published in such media as the Guild may determine. No writer or Company shall be entited to collect damages or shall be entitled to injunctive relief as a result of any decision of the committee with regard to credits. In signing any contract incorporating by reference or otherwise all or part of this Basic Agreement,

any writer or Company specifically waives all rights or claims against the Guild and/or its arbiters or any of them under the laws of libel or slander or otherwise with regard to proceedings before the Guild arbitration committee and any full and fair publication of the findings and/or decisions of such committee. The Guild and any writer signing any contract incorporating by reference or otherwise referring to this subsection or any writer consenting to the procedure set forth in this subsection, shall not have any rights or claims of any nature against any Company growing out of or concerning any action of the Guild or its arbiters or any of them, or any determination of credits in the manner provided in this subsection, and all such rights or claims are hereby specifically waived.

19. In the event that after the screen credits are determined as hereinabove provided, material changes are made in the script or photoplay, either the Company or participant and the Guild jointly may reopen credit determination by making a claim to the Guild or Company as the case may be, within forty-eight (48) hours after completion of the writing claimed to justify the revision of credits, in which case the procedure for determining such revised credits will be the same as that provided for the original determination of credits.

The Company agrees to make revisions in advertising material previously forwarded to the processor or publisher to reflect such redetermined credits, provided that such revisions can physically and mechanically be made prior to the closing date of such processor or publisher and at reasonable expense and provided the processor or publisher has not yet commenced work on that part of the material which the change would affect.

20. No writer shall claim credit for any participation in the screen authorship of any teleplay or story for which the credits are to be determined by the procedure herein provided for prior to the time when such credits have in fact actually been so determined, and no writer shall claim credits contrary to such determinations.

21. With reference to credits in advertising which is contracted for by the Company and which is more than eight column inches in size, if the names of the individual

producer or director shall be included, the name of the writer shall be included and in all such instances the writer shall receive parity as to size and style of type with the director and producer except in those instances where the Company shall have determined in good faith that the individual director's or producer's name has box office value. In connection with a series, anthology or episodic, or serial, if advertising credit is given to a producer or a director only in connection with advertising the entire series the writer shall be given credit in such advertising where the number of scripts contributed by such writer shall equal the number of programs produced or directed by the producer or director receiving such advertising credit. If spoken credits are accorded to the producer or director they shall also be accorded to the writer. Oral self identification by a producer or director shall not be deemed to be a spoken credit for the purpose hereof. In the event that the Company licenses or grants to any third party the right to make any of the uses of serial or episodic series material specified in Article 15B 14., it shall use its best efforts, in contracting with such third party, to require such third party to accord to the writer or writers of such material credit therefore which is appropriate to the field or medium for which such material is licensed; provided, however, that Company shall be obligated, in any contract with such third party for hard cover or paperback book publication of such material, to provide for credit to such writer or writers in a manner consistent with credits ordinarily given in the book publishing industry in similar instances. If Company itself uses such material pursuant to paragraphs a. or e. of said Article 15B 14., it will accord appropriate credit to such writer or writers in connection therewith, but in the event of any dispute concerning the appropriateness of such credit the company's decision shall be final. Nothing contained in this subsection 21. shall be deemed to affect, limit or modify the provisions of subsection 8. of Article 15B of this Basic Agreement, it being the intent that a "Buyer" executing an assumption agreement under subsection 8. shall in all respects be in the same position as the "Seller".

22. No commercial or advertising matter, audio, or visual, shall appear on or above the writer's card either as background or otherwise. The following uses of a sponsor's name, mark, slogan, product or package shall not be deemed to involve an appearance of "commercial or advertising matter":

a. Such use as a part of or in direct conjunction with the title of the program or program series, (as in "DuPont Show of the Month", "GE Theatre", "US Steel Hour");

b. Such use as an integral part of draperies, sets, or props appearing under a superimposition of credits where such draperies, sets or props were used in the entertainment portion of the program (as in various types of variety, comedy variety and audience participation programs);

c. The superimposition of a crawl or roller-type credit over a still or moving photograph of a sponsor's product on a set or sets used in the entertainment portion of the program where the use, demonstration, or exhibition of such product was integrated with the entertainment portion of the program;

d. Such use as a part of the playing or singing of the sponsor's musical theme.

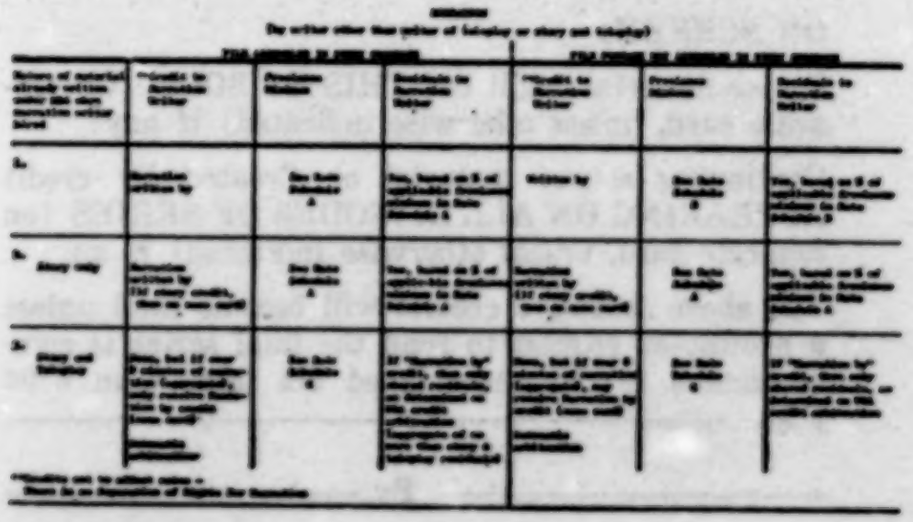
Anything in this subsection 22. to the contrary notwithstanding, it is understood and agreed that on any particular program the writer will be given parity of treatment with the director insofar as the appearance of commercial or advertising matter on their respective cards is concerned.

23. A credit on the screen in the form "created by" shall be given on each episode of an episodic series or serial, to the writer where such writer has separated rights and is entitled to sequel payments for such episode under Article 16B2. Such credit shall be contiguous to a writing credit. The Company may contract to give such credit to any person, but such contract shall provide that in the event another writer is determined to be entitled to such credit, as above provided, that writer shall be given the "created by" credit and the person whose contract provided for such credit may be given a "developed by" credit or other similar credit. If the contract was executed prior to June 16, 1966 providing for such "created by" credit, such credit may be given notwithstanding the above provisions. In the event no one is entitled to such separation of rights or in the case of anthology episodes, nothing herein shall prevent, or require, the giving by the Company a "created by" credit.

a. A writer entitled to "created by" credit shall be given appropriate source material credit in hard cover or paperback book publications arising out of the series. The contract with the publisher shall provide that this provision is for the express benefit of the writer and the Guild, but the failure of a publisher to comply with such requirement shall not constitute a breach by the Company.

b. With regard to any episodic series or serial in which a writer subject to this Basic Agreement has separated rights, is entitled to sequel payments under Article 16B2. and receives a "created by" credit, if the Company desires to grant a "developed by" credit, such credit may only be given for writing and shall be subject to a Guild arbitration to determine its appropriateness. The Guild's decision in this regard shall be final.

24. A credit entitled "narration written by" or "narration by" shall be in accordance with the following:



25. Notice of tentative credits shall be in the following form, which form has been approved by the Guild:

NOTICE OF TENTATIVE WRITING CREDITS

To: Writers Guild of America, West, Inc., 8955 Beverly Boulevard, Los Angeles, California 90048 and Participating Writers

NAMES OF PARTICIPATING WRITERS ADDRESS

_____ _____

Title of Episode: _____ Production #____
(indicate if pilot)

Series Title: _____

Producing Company: _____

Producer: _____ Assoc. Producer: _____

Director: _____ Story Editor (or Consultant) :____

Other Production Executives, if Participating Writers

_____

Writing credits on this episode are tentatively determined as follows:

ON SCREEN:

Source material credit ON THIS EPISODE (On separate card, unless otherwise indicated) if any:

Continuing source material or Created By credit APPEARING ON ALL EPISODES OF SERIES (on separate card, unless otherwise indicated) if any:

The above tentative credits will become final unless a protest or request to read the final script is communicated to the undersigned not later than 6:00 P.M. _____.

_____ By:_____

26. Where the Company supplies material to newspapers and periodicals such as TV Guide for listing programs, it will list writing credits if they have theretofore been determined.

27. Where the Company has failed to provide credit on the screen in accordance with final credit determination it shall correct each print before such print is retelecast and place a full-page advertisement in either DAILY VARIETY or the HOLLYWOOD REPORTER specifically crediting the writer. Such remedies shall be in addition to any claim the individual writer may have for damages by reason of such failure to provide proper credit.

28. Each writing credit card required hereunder shall appear on the screen a minimum of two seconds, or the length of the producer's or director's credit, whichever is shown longer.

29. If by reason of method of assignment of the writer or other circumstances in connection with a program or series, the provisions of this Schedule A are inappropriate, either the Guild or the Company may raise the question of such inappropriateness and the mutual agreement reached by them with respect to the credit to be given, if any, shall be binding and conclusive on these parties and the writers.

TPN/rlw
5/11/73

GC 3

* Charged with violation of Strike Rules.
✓ Not Member
☐ Received telegram within Paragraph 13(a) of Complaint

All names not specifically marked are members and received the strike rules and all routine Writers Guild mailings

RE: WRITERS GUILD STRIKE
HYPHENATES

Studio	Name of Hyphenate	Primary Capacity
Screen Gems	✓Harry Ackerman	Executive Producer/Producer
	William Asher	Executive Producer/Producer
	W. L. Baumes	Assistant Executive to Douglas S. Cramer
	William Bickley	Producer
	Henry Colman	Vice President of Current Programs
	Seymour Friedman	Vice President & Executive Production Manager
	Tom Gries	Director
	Sid Kalcheim	Executive Assistant to Arthur M. Frankel
Universal City Studios, Inc.	Albert Aley	Producer
	Harve Bennett	Creator of TV Shows & Producer
	Douglas Benton	Producer
	Stephen Bochco	Producer
	*Jerry Bredouw	Publicity and Promotion
	Stephen Cannell	Story Editor
	*Cy Chermak	Executive Producer
	Robert Cinader	Producer
	Richard Colla	Director
	Edward De Blasio	Story Editor
	George Eckstine	Producer
	*Jon Epstein	Producer
	Merwin Girard	Script Writer
	Michael Gleason	Producer and Writer
	Dean Hargrove	Producer
	Roy Huggins	Executive Producer
	Norman Jolley	Story Editor
	Roland Kibbee	Producer and Director
	James Komack	Creator and Producer of Series
	Stephen Hulpern ✓	Assoc Prod
	Leonard Kaufman	Prod

Studio	Name of Hyphenate	Capacity
Universal City Studios, Inc.	Nina Laemmle	Story Editor
	Glen Larson	Executive Producer
	David Levinson	Producer and Executive
	Richard Levinson	Co-Executive Producer and Creator of TV series
	William Link	Co-Executive Producer and Creator of TV series
	Abby Mann	Executive Producer
	Paul Mason	Producer
	James Mc Adams	Co-Producer
	Lou Morheim	Producer
	Matthew Rapf	Producer
	Frank Price FRANK PIERSON Producer	Senior Vice President of Universal TV
	William Sackheim	Producer of features and Creator-Developer of TV series
	* Herman Saunders	Executive Producer
	George Seaton	Director - features
	Leonard Stern	Executive Producer of 2 series; Creator and Pilot Writer of TV series
	Jo Swerling	Producer
	* Coles Trapnell	Executive Story Editor
	Robert Van Scoyk	Story Editor
	* David Victor	Executive Producer
	* Jack Webb	Supervising Executive
	Herb Wright	Associate Producer
Paramount Television	Ivan Goff	Producer/Story Editor
	Ben Roberts	Producer/Story Editor
	David Levy	Producer/Writer
	Paul Playdon	Producer/Writer/Story Editor
	Jerry Rannow	Staff Writer/Story Editor
	Greg Strangis	Staff Writer/Story Editor
	Ed Scharlach	Script Consultant
	~~Bernie Orenstein~~	~~Executive Producer/Writer~~

Studio	Name of Hyphenate	Capacity
Paramount Television	~~Sol Turtletaub~~	~~Executive Producer/Writer~~
	Laurence Heath	Executive Producer/Writer
	Howard Leeds	Producer/Story Editor
	Skip Webster	Story Editor
	Sherwood Schwartz	Executive Producer/Writer
	Garry Marshall	Executive Story Consultant
	Jerry Belson	Executive Consultant or Executive Story Consultant
Paramount Features	Francis Ford Coppola	Producer/Director/Writer
	Sidney Furie	Director
	Arthur Penn	Director/Writer
	✱ Peter Bogdanovich	Producer/Director
	✱ Albert S. Ruddy	Producer
	Jean-Caludc Tramont	Associate Producer/Writer
	Thomas L. Miller and ✓Edward M. Milkis	Co-Producers
	~~Arnold Margolin and Jim Parker~~	~~Producers/Writers~~
	Martin Ransohoff	Producer/Writer
	Howard W. Koch	Producer/Director
	Paul Monash	Producer/Director
	✓John Schlesinger	Director
	Phil Kaufman	Director
American International Pictures, Inc.	Lawrence A. Gordon	Vice President in charge of World Wide Production
Bing Crosby Productions, Inc.	Andrew J. Fenady	Executive Producer/Producer/ Story Editor/Writer
Hanna-Barbera Productions, Inc.	Ray Allen and Harvey Bullock	Writers/Producers
Metro-Goldwyn-Mayer Inc.	Hugh Benson	Producer
	Norman Felton	Executive Producer
	David Karp	Producer

Studio	Name of Hyphenate	Capacity
Metro-Goldwyn-Mayer Inc.	Frank Glicksman	Executive Producer
	Al Ward	Producer
	Don Brinkley	Story Consultant
	Jack Haley Jr.	Executive
	Burt Nodella	Executive
	✓ Reza Badiyi	Director
	✓ C. G. Carroll, III	Producer
	✱ Michael Crichton	Director
	☐ Sam Pechinpah	Director
	Gordon Parks	Director
Metromedia Producers Corporation	Marshall Flaum	Executive Producer/ Producer
	Andy White	Executive Producer/ Producer
	Richard Berg	Executive Producer/ Producer
	Robert Kaufman	Producer
	Steve Pritzker	Producer
Twentieth Century-Fox Film Corporation	Gerald DiPego	Writer/Assoc. Producer
	Ernest Lehman	Writer/Producer/Director
	✓ Larry Peerce	Writer/Producer/Director
	Irving Ravetch	Writer/Producer
	William Roberts	Writer/Producer
	✓ Stuart Rosenberg	Writer/Producer/Director
	Ernest Tidyman	Writer/Producer
	Robert Aldrich	Writer/Director
	~~✓ Steven Spielberg~~	~~Writer/Director~~
	✓ David Lange	Writer/Producer
	James Bridges	Writer/Director
	William D'Angelo	Writer/Producer
	Ernest Frankel	Writer/Producer
	~~Anthony Wilson~~	~~Writer/Producer~~
	✓ Jon Kubichan	Writer/Story Consultant
	✱ Rob Cohen	Writer/Executive
	~~✓ Wanda Whitman~~	~~Writer/Story Analyst~~

Studio	Name of Hyphenate	Capacity
Walt Disney Productions	James Algar	Producer
	William Bruckner	Story Analyst
	Larry Clemmons	Animation Story
	Roy E. Disney	Corporate Officer/Producer/ Director
	Gabe Essoe	Senior Publicist
	✓Winston Hibler	Producer
	Ward Kimball	Animation Director
	Thomas Leetch	Producer
	Robert Metzler	Administrative Executive
	✱Frank Paris	Manager Story Department
	Robert Stevenson	Director
	☐ William Walsh	Producer
Warner Bros. Inc.	✓Sidney Beckerman	Co-Producer
	Mel Brooks	Director
	✓Stan Canter	Co-Producer
	✓James Cresson	Co-Producer
	✓Robert Daley	Producer
	✓Marty Elfand	Producer
	William Friedkin	Director
	✓Robert Fryer	Producer
	William Hendricks	Executive
	✓Michael Hertzberg	Producer
	✓Michael Hodges	Writer/Director
	✓Harvey Matofsky	Producer
	Paul Mazursky	Producer/Director
	Carl Milliken	Executive (Research Director
	✓Ted Post	Director
	✓Herbert Ross	Producer/Director

Studio	Name of Hyphenate	Capacity
Warner Bros. Inc.	✓Richard Rush	Co-Producer/Director
	✓Gene Saks	Director
	✓Leonard Scharder	Technical Advisor
	✓Jack Starrett	Director
	William Tennant	Producer
	✓Jan Troell	Director
	Garry Marshall	Executive Producer
	✓John G. Stephens	Producer
	✓Richard J. Thorpe	Producer-Director
Columbia Broadcasting System, Inc.	Paul King	Vice President Production
	William Kayden	General Programming Executive
	Franklin Barton	Vice President, Program Development
	✱John Mantley	Executive Producer
	Ron Honthaner	Associate Producer
	Philip Barry	Executive Producer
	Leonard Katzman	Producer
	Jack Miller	Executive Story Consultant
National Broadcasting Company	✓Lou Hunter	Programming Dept. ~~Executive~~ Brager Film Programs
	~~Larry Stewart~~	~~Producer~~
	~~Art Nadel~~	~~Producer-Director~~
	~~Charles Jones~~	~~Producer~~
	✓Bob Wynn	Producer

299

GC-4

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD

LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601

Cable: INTWRITER, LOS ANGELES

April 14, 1973

CERTIFIED MAIL #70122
RETURN RECEIPT REQUESTED

Mr. David Victor
147 Groverton Place
Los Angeles, California 90049

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Victor:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM:meh
Enc.

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

DAVID VICTOR

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Sections 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 2nd day of May, 1973, at 3:00 p.m. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Section(s) 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which read as follows:

> *Section 1*: Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.
>
> *Section 12*: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
>
> *Section 13*: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

Specifically, you are charged with having crossed the Guild's picket lines at Universal City Studios, Inc. during the month of April, 1973, for the purpose of rendering services for a company against whom the Guild was at such time on strike.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

WRITERS GUILD OF AMERICA, WEST, INC.
8955 Beverly Boulevard
Los Angeles, California 90048

[Union Bug]

[Cancelled Postmark, April 14, 1973, Los Angeles, Calif.]

10720 *SPECIAL DELIVERY*

CERTIFIED MAIL No. 70122

RETURN RECEIPT REQUESTED

Mr. David Victor
147 Groverton Place
Los Angeles, Ca. 90049

GC-5

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD

LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601

Cable: INTWRITER, LOS ANGELES

April 14, 1973

CERTIFIED MAIL #70123
RETURN RECEIPT REQUESTED

Mr. Jon Epstein
1988 Coldwater Canyon Drive
Beverly Hills, California 90210

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Epstein:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM:meh
Enc.

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

JON EPSTEIN

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 2nd day of May, 1973, at 4:00 p.m. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Section(s) 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which read as follows:

Section 1: Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.

Section 12: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.

Section 13: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial

or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

Specifically, you are charged with having crossed the Guild's picket lines at Universal City Studios, Inc. during the month of April 1973, for the purpose of rendering services for Universal Television, Inc. against whom the Guild was at such time on strike.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

GC-6

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601
Cable: INTWRITER, LOS ANGELES

April 14, 1973

CERTIFIED MAIL #70125
RETURN RECEIPT REQUESTED

Mr. Herman S. Saunders
3551 Vista Haven Road
Sherman Oaks, California 91403

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Saunders:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/bc

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

HERMAN SAUNDERS

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Sections 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 4th day of May, 1973 at 3:00 p.m. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Section (s) 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which read as follows:

> *Section 1*: Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.
>
> *Section 12*: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
>
> *Section 13*: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial

> or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

Specifically, you are charged with having crossed the Guild's picket lines at Universal City Studios, Inc. during the month of April 1973, for the purpose of rendering services for Universal Television, Inc., against whom the Guild was at such time on strike.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

GC-7

EXHIBIT D

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild
8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601
Cable: INTWRITER, LOS ANGELES

April 14, 1973

CERTIFIED MAIL #70124
RETURN RECEIPT REQUESTED

Mr. John Mantley
4121 Longridge Avenue
Sherman Oaks, California 91403

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Mantley:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM:meh
Enc.

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

JOHN MANTLEY

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Sections 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 4th day of May, 1973, at 2:00 p.m. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Section(s) 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which read as follows:

Section 1: Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.

Section 12: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.

Section 13: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other

type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

Specifically, you are charged with having crossed the Guild's picket lines at CBS Studio Center during the month of April 1973, for the purpose of rendering services for Columbia Broadcasting System, Inc. against whom the Guild was at such time on strike.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

GC-8

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601
Cable: INTWRITER, LOS ANGELES

April 6, 1973

CERTIFIED MAIL #70496
RETURN RECEIPT REQUESTED

Mr. John Michael Crichton
7850 Torreyson Drive
Los Angeles, California 90046

RE: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Crichton:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/blb
Enc.

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

JOHN MICHAEL CRICHTON

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Sections 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 1st day of May, 1973, at 3:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of Sections 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which read as follows:

> *Section 12*: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
>
> *Section 13*: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

Specifically, you are charged with having crossed a Guild picket line at Metro-Goldwyn-Mayer, Inc. on or about March 6 and March 7, 1973, for the purpose of rendering services for Metro-Goldwyn-Mayer, Inc., which company was at that time on the Guild's Strike List.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

GC-9

WRITERS GUILD OF AMERICA THEATRICAL AND TELEVISION FILM BASIC AGREEMENT OF 1970—NETWORKS

This agreement hereinafter referred to as "Writers Guild of America Theatrical and Television Film Basic Agreement of 1970—Networks", executed as of the sixteenth day of June, 1970, by and between Writers Guild of America, West, Inc., and Writers Guild of America, East, Inc. (hereinafter referred to as the "Guild"), and American Broadcasting Company, a division of American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., and National Broadcasting Company, Inc. (each hereinafter referred to as the "Company" and collectively as the "Companies"). In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

The provisions of this Basic Agreement shall be designated as follows:

(i) General provisions (herein designated "General") applicable to both theatrical employment and purchases and to television employment and purchases, and
(ii) Provisions (herein designated "Television") applicable to television employment and purchases only, and
(iii) Provisions (herein designated "Theatrical") applicable to theatrical employment and purchases only.

Article 1 Definitions

The following terms or words used herein shall have the following meaning:

A. GENERAL

1. The term "television motion picture" (sometimes referred to in this Basic Agreement as "television film") means the entertainment portion of motion pictures,

whether made on or by film, tape or otherwise and whether produced by means of motion picture cameras, electronic cameras or devices or any combination of the foregoing or any other means, methods or devices, now used or which may hereafter be adopted for the recordation of motion pictures produced primarily for exhibition by free television, excepting for the purpose of this Basic Agreement, kinescopes of live television broadcasts, and recordings of live programs made and used in accordance with the terms and provisions of the 1968 WGA Television Freelance Minimum Basic Agreement and any successor agreement thereto applicable to such live programs.

2. The term "theatrical motion picture" means motion pictures and photoplays, whether made on or by films, tape or otherwise and whether produced by means of motion picture cameras, electronic cameras, or devices or any combination of the foregoing or any other means, methods or devices now used or which may be hereafter adopted other than those motion pictures produced primarily for exhibition by free television.

2. The term "free television" means any method of exhibition by television of visual images but excluding "pay television".

4. The term "pay television" means a method of exhibition by television of a motion picture where a charge is paid by or assessed to or collected from the viewing audience, including subscription, telemeter or any other method whereby a charge is paid by the viewing audience for the right to view such motion picture.

5. The term "literary material" shall be deemed to include stories, adaptations, treatments, original treatment, scenarios, continuities, teleplays, screenplays, dialogue, scripts, sketches, plot, outlines, narrative synopses, routines, narrations and formats for use in the production of television film. Notwithstanding the foregoing, the following shall be excluded from the definition of literary material:

(a) [Illegible]

(b) commercial material;

(c) advertising, promotion and publicity material;

(d) political speeches, public addresses, or commemorative speeches, unless incorporated in a script for entertainment purposes rather than for bona fide non-entertainment purposes;

(e) religious services and sermons, except sermons incorporated in a dramatic script or written by a writer who performs services otherwise covered by this agreement in connection with the program;

(f) physical culture program material, except physical culture material incorporated in a dramatic script or written by a writer who performs services otherwise covered by this agreement in connection with the program;

(g) material written by government employees, acting within the scope of their government employment;

(h) talks, forums, lectures;

(i) questions, answers and/or ideas for stunts for quiz programs and for audience participation programs, unless they are the work of a writer specifically employed to write such material;

(j) isolated gag material, casual jokes, established or frequently repeated characterization lines, unless they are the work of a writer specifically employed to write such material;

(k) choreography or stage or technical directions.

6. The term "radio rights" means the right to broadcast by radio for aural reception only and unaccompanied by any recordation, transmission or broadcast intended for visual reception.

7. "Week-to-Week Employment". Employment of a writer on a week-to-week basis is employment which, except for such restrictions as may herein elsewhere be contained, may be terminated by the Company or writer at any time.

8. The term "public domain" refers to literary material which is not subject to copyright protection in the United States.

9. A "member of the Guild in good standing" is defined as a member of the Guild who has tendered the

initiation fee and periodic dues uniformly required as a condition of acquiring or retaining membership.

10. The term "writer" shall not be deemed to include any corporate or impersonal purveyor of literary material or rights therein.

11. Other than as provided in Article 14 hereof, this Basic Agreement shall not nor is it intended to cover the services of Producers, Directors, Story Supervisors, Composers, Lyricists, or other persons rendering services in a bona fide non-writing capacity except to the extent that such services consist of writing services covered under Article 1, section B1(a)(2) and section C, 1(a)(3), nor the employment of Story Analysts, at any time prior to the expiration of this Basic Agreement, in the synopsizing of literary material, as referred to in subparagraph 1(f) of the wage scales and working conditions of the current agreement between "Producer and I.A.T.S.E. & M.P.M.O. and Local #854 thereof".

12. It is understood that this Basic Agreement shall not, nor is it intended to cover (except as provided in Article 3 and 6) contracts solely for purchase of stories, or any person who writes, whether under an optional contract or otherwise on an independent contractor basis.

13. Other terms not expressly defined in this Basic Agreement are used in their present commonly understood meaning in the Motion Picture Industry (as to the Theatrical provisions hereof) and the Television Industry (as to the Television provisions hereof) in the State of California.

1. Writer and Professional Writer.

a. A "writer" is a person who is:

(1) Employed by the Company to write literary material as defined herein, where the Company has the right by contract to direct the performance of personal services in writing or preparing such material or in making revisions, modifications or changes therein;

(2) employed by Company, who performs services (at Company's direction or with its consent) in writing or preparing such literary material or mak-

ing revisions, modifications, or changes in such literary material regardless of whether such services are described or required in his contract of employment; provided, however that any writing services described below performed by Producers, Directors, Story Supervisors (other than as provided in Article 14 hereof), other employees or Composers or Lyricists, shall not be subject to this Basic Agreement and such services shall not constitute such person a writer hereunder:

(a) Cutting for time
(b) Bridging material necessitated by cutting for time
(c) Changes in technical or stage directions
(d) Assignment of lines to other existing characters occasioned by cast changes
(e) Changes necessary to obtain continuity acceptance or legal clearance
(f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography
(g) Such changes in the course of production as are made necessary by unforseen contingencies (e.g., the elements, accidents to performers, etc.)
(h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding story or teleplay

In addition to the foregoing in the case of a person who at the time he performs services has not received at least two screen credits for story or screenplay or both, as determined pursuant to the Theatrical Schedule A of this Basic Agreement, or Schedule A of prior Theatrical basic agreements, within a period of ten years (or has not received at least one such credits within a period of five years) immediately prior to the rendition of such services, and who is employed solely in the capacity of the bona fide producer of a motion picture and whose employment does not include the requirement that

he perform writing services, then, such person may, in addition to the above, perform the following writing services: make changes in dialogue, narration or action, but not including significant changes in plot, story line or interrelationship of characters, and such services by such person shall not be subject to this Basic Agreement. If such person does make significant changes in plot, story line or interrelationship of characters, then such services by such person shall be subject to this Basic Agreement, except Article 6 hereof.

• • • •

received at least two such screen credits within such ten-year period (and with at least one of those credits within such five-year period) immediately prior to the rendition of such services, and who is employed solely in the capacity of the bona fide producer of a motion picture, and whose employment does not include the requirement that he perform writing services, then, if such person shall perform writing services in addition to those described in (a) through (h) above, such services by such person shall be subject to this Basic Agreement.

In addition to the foregoing, in the case of a person who at the time he performs services is employed solely in the capacity of the director of a motion picture, and whose employment does not include the requirement that he perform writing services, then, such person may, in addition to the above, perform the following writing services, make changes in dialogue, narration or action, but not including significant changes in plot, story line or interrelationship of characters, and such services by such person shall not be subject to this Basic Agreement. If such person does make significant changes in plot, story line or interrelationship of characters, then such services by such person shall be subject to this Basic Agreement, except Article 6 hereof.

In any event, if any producer or director shall receive screen credit pursuant to the provisions of the Theatrical Schedule A attached hereto or is de-

termined by a Guild credit arbitration committee to be entitled to such credit pursuant to such Schedule A and the Guild's credit rules relating to the quantity of the contribution necessary for such credit in effect on the effective date of this Basic Agreement, then the provisions of Article 6 A 9. hereof shall apply with respect to such person.

With respect to a person employed solely as a producer-director, on the motion pictures which he directs the director paragraph above shall apply and on the motion pictures which he does not direct, the producer paragraphs above shall apply.

As used above, "producer" shall also include the bona fide executive producer of said motion picture if such executive producer is of the same industry stature and has responsibilities and functions similar to those held or exercised by the following executive producers during 1966: William Conrad, Ross Hunter, Samuel Arkoff, James H. Nicholson.

With respect to signatory Companies, no services of any kind of any executive of the same industry stature and with responsibilities and functions similar to those held by or exercised by the following executives during 1966: Walt Disney, Robert Weitman, Walter MacEwen, M. J. Frankovich and Arthur Kramer shall be covered by any provisions of this Basic Agreement, except that if any such executive shall receive screen credit pursuant to the provisions of the Theatrical Schedule A of this Basic Agreement or is determined by a Guild credit arbitration committee to be entitled to such credit pursuant to such Schedule A and the Guild's credit rules relating to the quantity and quality of the contribution necessary for such credit in effect on the effective date of this Basic Agreement, then the provisions of Article 6A 9. of this Basic Agreement shall apply with respect to such person.

7. "Rewrite" as used herein means the writing of significant changes in the plot of, story line of, or interrelationship of characters in a screenplay, submitted by

the Company to a writer fo rthe purpose of making such changes.

8. Merchandising Rights—The term "merchandising rights" means the right to manufacture and to sell or otherwise dispose of any object or thing first described in literary material written by the writer pursuant to an employment agreement, subject to this Basic Agreement, entered into on or after June 16, 1970, or acquired from a professional writer; provided such object or thing is fully described in such literary material and by such description appears to be unique and original.

The writer shall have no merchandising rights. However, if the Company exploits the merchandising rights (as defined above) in any such literary material, company shall pay to such writer an amount equal to five per cent (5%) of absolute gross (that is, monies remitted by the manufacturer on account of the exploitation of the subject merchandising rights). The provisions of this subsection 8. are also applicable to a writer who is not entitled to Separation of Rights.

C. TELEVISION

1. Writer and Professional Writer

a. A "Writer" is a person:

(1) Whom the Company has engaged to write "literary material" as hereinabove defined, where the Company has the right by contract to direct the performance of personal services in writing or preparing the literary material or in making revisions, modifications or changes; or

(2) As to whom the Company has by contract the right to direct the performance of personal services in making revisions, modifications or changes in "literary material."

(3) Employed by Company, who performed services (at Company's direction or with its consent) in writing or preparing literary material or making revisions, modifications, or changes in literary material regardless of whether such services are described or required in his contract of employment; provided, however, that any writing services described below performed by Producers, Directors, Story Supervisors, other employees (other than as provided in Article 14 hereof), or Composers, or Lyricists, shall not be subject to this Basic Agreement and such services shall not constittue such person a writer hereunder:

(a) Cutting for time
(b) Bridging material necessitated by cutting for time
(c) Changes in technical or stage directions
(d) Assignment of lines to other existing characters occasioned by cast changes
(e) Changes necessary to obtain continuity acceptance or legal clearance
(f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography

(g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.)
(h) Instructions, directions or suggestions, whether oral or written, made to writer regarding story or teleplay

In addition to the foregoing in the case of a person who at the time he performs services has not received at least two or more screen credits for story or teleplay or both, as determined pursuant to the Television Schedule A of this Basic Agreement, or Schedule A of the previous Television basic agreements, within a period of five years prior to the rendition of such services, and who is employed solely in the capacity of the bona fide producer of a specific television program, and whose employment does not include the requirement that he perform writing services, then, such person may, in addition to the above, perform the following writing service make changes in dialogue, narration of action, but not including significant changes in plot, story line or interrelationship of characters, and such services by such person shall not be subject to this Basic Agreement. If such person does make significant changes in plot, story line or interrelationship of characters, then such services by such person shall be subject to this Basic Agreement, except Article 6 hereof.

In addition to the foregoing, in the case of a person who at the time he performs services has received at least two or more such television screen credits within such five-year period prior to the rendition of such services, and who is employed solely in the capacity of a bona fide producer of a specific television program, and whose employment does not include the requirement that he perform writing services in addition to those described in (a) through (h) above, such services by such person shall be subject to this Basic Agreement.

As used above, "bona fide producer of a specific television program" shall also include the bona fide

executive producer of said program if such executive producer is of the same industry stature and has responsibilities and functions similar to those held or exercised by the following executive producers during the 1965-66 broadcast season: Norman Felton, Harry Ackerman, Paul Monash.

With respect to signatory Companies, no services of any kind of any executives of Companies which executives have as their principal function the supervision of various television pilots and series and in this connection have the authority to give creative instructions to the producers of such pilots and series and to others connected with the production thereof shall be covered by any provisions of this Basic Agreement. If, however, any such executive shall receive screen credit pursuant to the provisions of Schedule A attached to this Basic Agreement or is determined by a Union credit arbitration committee to be entitled to such credit pursuant to Schedule A and the Union's credit rules relating to the quantity and quality of the contribution necessary for such credit in effect on the effective date of this Basic Agreement, then the provisions of Article 6, subsection 9 shall apply with respect to such person.

Examples of individuals who the Companies represent presently (as of October 24, 1972) function in their employment as such executives are as follows:

William Brademan	John V. McMahon
Michael Eisner	Stanley Robertson
Perry Lafferty	Alan Wagner

In addition to the foregoing, in the case of a person who at the time he performs services is employed solely in the capacity of the director of a specific television program, and whose employment does not include the requirement that he perform writing services, then, such person may, in addition to the above, perform the following writing services: make changes in dialogue, narration or action, but not including significant changes in plot, story line or interrelationship of characters, and such services

by such person shall not be subject to this Basic Agreement. If such person does make significant changes in plot, story line or interrelationship of characters, then such services by such person shall be subject to this Basic Agreement, except Article 6 hereof.

Article 6 Guild Shop (GENERAL)

1. Except as provided below, in both theatrical and television films each writer employed by Company on the effective date of this Basic Agreement who is then a member of the Guild in good standing shall remain a member in good standing, and each writer so employed who is not a member shall, on or before the thirtieth day following the effective date of this Basic Agreement, become and remain a member of the Guild in good standing. Each writer employed hereunder by Company after the effective date of this Basic Agreement shall not later than the thirtieth day following the beginning of his first employment, as hereinatfer defined, in the motion picture and television industry, become and remain a member of the Guild in good standing.

The term "first employment" as referred to above shall mean the first such employment to which the provisions of this Basic Agreement apply as a writer for a motion picture by an employer in the motion picture and television industry, on or after the effective date of this Basic Agreement.

2. The provisions of subsection 1. of this Article 6 shall not apply.

a. If a writer is not a member of the Guild in good standing at the time if his employment and although required by the provisions of his employment agreement to do so, fails or refuses to become a member of the Guild in good standing within the 30 days above mentioned, such writer, shall nevertheless be deemed to be a member in good standing, provided the Company on notice thereafter from the Guild shall pay or cause to be paid the initiation fee and dues of the writer in the manner, within the time, and subject to the provisions of subsection 5.b. hereof relating to the payment of dues; provided further that such writer shall be deemed to be a member in good standing for only the period necessary to permit him to complete the performance of his services in connection with the then current assignment. Company may use this exception only once for any particular person.

b. To a writer whom the Company is required to employ as a condition of the sale or license of material, provided that the Company or the writer shall, after notice from the Guild that the writer has not become a member in good standing as required hereunder, pay or cause to be paid to the Guild the initiation fees and dues that the writer would otherwise be required to pay hereunder during such employment, in the manner, within the time, and subject to the provisions of subsection 5. b. hereof relating to the payment of dues.

c. To a writer employed by reason of his intimate or unique knowledge concerning the subject matter of the material. Company may use this exception only once for any particular person.

However, the writers employed by the Company within the above exceptions b and c shall not exceed 10% of the total number of writers in its employ of the Company. For the purpose of such computation, if the Company has in its employ at any time less than ten (10) writers then one of such writers so employed may fall within one of the exceptions mentioned above. Promptly following the employment of any writers claimed by the Company to be within exceptions b or c above, the Company will notify the Guild in writing of the name of the writer employed, the date of the employment agreement and the fact that the Company claims that such writer is an exception hereunder.

For the purpose of such computation a writer who is employed under an exclusive contract by a Company shall be regarded as being employed by the Company at all times during the term of such contract, including periods during which the writer may be on layoff and periods during which such contract may be suspended by reason of illness or default of the writer or otherwise. The writer shall be regarded as continuing in the employ of the Company by which he is employed regardless of the fact that his services may be loaned to another Company.

3. The term dues as used herein shall not include fines or initiation fees.

4. Promptly after request by any person designated by the Company, the Guild will admit such person to membership in the Guild upon terms and conditions not more burdensome to such person than those then applicable to other applicants. Membership shall be effective as of the date of such request. Guild agrees that during the term it will not impose any unreasonable initiation fee as a condition to admission to membership, and agrees that during the term hereof it will not impose upon its members any obligation to pay dues that do not uniformly apply to all members of the Guild.

It is agreed that the Guild shall not close its membership books or otherwise prevent any person who wishes to become or remain a writer from becoming a member of the Guild, but on the contrary (subject to the provisions hereof relating to waivers as to members suspended or expelled) will make available the privileges of membership to any and all writers employed by the Company. The Guild will reinstate or readmit to membership any writer who applies for reinstatement or readmission, after being declared to be not in good standing or after suspension, expulsion, or resignation for any reason whatsoever, provided the writer will apply for such reinstatement or readmission and with such application tender to the Guild unpaid dues permitted by law, and upon such tender the Company may employ or continue to employ such writer. Instead of readmitting or reinstating such writer, the Guild may at its option grant to the Company a waiver as to such writer, in which event, for the purpose of determining the Company's compliance with the provisions of this Article 6, such writers shall not be considered as being employed by the Company.

5. If during any time that a writer is employed by the Company under a contract of employment such writer is or becomes a member of the Guild in good standing and if such writer shall subsequently and before his employment under such contract terminates, cease to be a member of the Guild in good standing then:

a. If such writer has ceased or shall cease to be a member for any reason other than his failure to pay dues, such writer shall, for the purposes of this Basic Agreement, be deemed to remain a member of the Guild in good standing throughout the writer's employment under said contract of employment as the same may be extended or renewed pursuant to any provisions or options therein contained.

b. If he has ceased or shall cease to be a member in good standing by reason of his failure to pay dues, such writer shall, for the purposes of this Basic Agreement, be deemed to remain a member in good standing for a period of fifteen (15) days after written notice, that he has ceased to be a member in good standing for failure to pay dues, from the Guild to such writer and to the Company, and if, prior to the expiration of said fifteen (15) days' period, payment of said dues in fact due and owing and specified in said notice shall be made by the writer or the Company, then, for the purposes of this Basic Agreement, such writer shall not lose his status as a member in good standing. To the extent that it may be lawful for the Company to do so, the Company may require, as a condition of employment, that any writer become and/or remain a member of the Guild in good standing, and may also require such written consent or consents as may be necessary so that, if the Company elects, it may pay to the Guild any dues of any writer and the Company shall have the right, insofar as its obligations to the Guild and to any writer under the terms and provisions of this Basic Agreement are concerned, if it elects, to deduct the amount of such dues from any compensation then or thereafter due or to become due to the writer; provided, however, that if such payment and deduction are or shall become contrary to law, or any statute, or are declared by any court of competent jurisdiction in the State of California or by any Federal Court or the National Labor Relations Board or its General Counsel, or by any other board or individual having jurisdiction over the matter, to be in violation of any applicable law or statute and if by reason thereof the Company

fails to deduct and pay to the Guild such dues, as aforesaid, and shall notify the Guild thereof in writing within the fifteen (15) days after any notice from the Guild above mentioned, then although such dues are not paid within the fifteen (15) days' period, for the purposes of this Basic Agreement such writer shall, nevertheless, be deemed to remain a member of the Guild in good standing throughout the term of the writer's assignment.

Every personal service contract of employment shall provide that if the writer fails or refuses to become or remain a member of the Guild in good standing, as above provided, the Company shall have the right at any time thereafter to terminate such employment agreement with such writer.

If the Company is required or directed by any decision of a court of competent jurisdiction or any proper governmental authority to refund to any writer, in whatsoever form the same may be recovered, any dues deducted and paid to the Guild by the Company under the provisions of paargraph b. of this subsection 5., the Guild agrees to repay to the Company the amount of such dues so refunded. The Guild will cooperate with the Company in obtaining the necessary authorizations from writers for the payment and deduction of dues in the manner provided in paragraph b. above.

6. The Guild will facilitate employment of its members by the Company and will at all reasonable times promptly furnish to the Company in writing information concerning the status of any of its members, and the Company shall be entitled to rely upon such information so furnished by the Guild.

7. The Guild represents and warrants that discipline, resignation, admission, reinstatement, readmission and all other matters relating to membership status will at all times during the term hereof be within the exclusive jurisdiction of the Guild; and the Guild agrees that it will exercise such jurisdiction subject to and in accordance with the provisions and intent of this Article 6 and of any other applicable provisions of this Basic Agreement.

8. It is understood that the provisions of this Article 6 shall never under any circumstances be so construed during the term of this Basic Agreement as to constitute or permit what is known as a "closed shop" or construed in any manner that will at any time deprive the Company of its right to employ or continue the employment of a writer who is not a member of the Guild in good standing, or who does not become a member of the Guild in good standing within the period prescribed in subsection 1. of this Article 6 if the Company has reasonable grounds for believing that such a membership was not available to such writer on the same terms and conditions generally applicable to other like members of the Guild, or if the Company has reasonable grounds for believing that membership in the Guild was denied, deferred, suspended or terminated for reasons other than the failure of such person to tender the applicable periodic dues uniformly required as a condition for acquiring or retaining membership in the Guild.

9. If a person who has not been listed by the Company as a writer in accordance with the provisions of Article 3 hereof shall receive, or shall have been entitled to, screen credit of the nature mentioned in Article 1 hereof, then if within fifteen (15) days after receipt of written notice thereof from the Guild to the Company the writer or the Company shall pay or cause to be paid the dues payable to the Guild for the period during which the person performed his services in the writing of the literary material after a date 30 days from the commencement of such services, then such person shall be deemed to have been a member of the Guild in good standing during the time that he was so performing his services as a writer. For such purpose the person receiving or entitled to such credit or the Company may apportion on a reasonable basis, salary payable to such person during the period he was employed as a writer.

10. Where the Company has failed to include a writer employed by the Company on the list of names of writers to be sent to the Guild under Article 3 and where such writer's performance of writer's services has continued for more than thirty (30) days after the beginning of

his first employment, the Company on notice from the Guild shall pay or cause to be paid the initiation fees and dues of the writer in the manner, within the time, and subject to the provisions of subsection 5.b. hereof relating to the payment of dues. The provisions of this paragraph shall not apply in the event the Guild gives the Company such notice prior to the expiration of such period of thirty (30) days.

Article 7 No Strike, No Lock-out Clause (General)

1. The Guild agrees that during the term hereof it will not call or engage in any strike, slowdown or stoppage of work affecting theatrical motion picture or television film production against the Company.

2. If, after the expiration or other termination of the effecive term of this Basic Agreement, the Guild shall call a strike against any Company, then each respective then current employment contract of writer members of the Guild (hereinafter for convenience referred to as "members") with such Company shall be deemed automatically suspended, both as to service and compensation, while such strike is in effect, and each such member of the Guild shall incur no liability for breach of his respective employment contract by respecting such strike call, provided such member shall promptly, upon the termination of such strike, and on the demand of the Company perform as hereinafter in this paragraph provided, and the member shall be deemed to have agreed as follows:

a. That if the writer has been assigned to the writing of any material at the time any such strike is commenced, he will, after the termination of such strike and upon the request of the Company, report to the Company and perform his services in the completion of such assignment at the same salary and upon the same terms and conditions as were agreed upon prior to the commencement of said strike.

b. That he will immediately, after the termination of such strike and upon the request of the Company, execute a new contract on the same terms and conditions, and at the same salary or other compensation as provided in the employment contract which was in effect at the time the strike commenced, except that such new contract shall be for a period or periods, including options, equivalent to the unexpired term of the contract which was in effect when such strike was commenced.

c. That he will, in lieu of b., after the termination of such strike, at the option of the Company, and upon its demand, execute an agreement in writing with the Company extending the term or period of such personal service contract in effect when such strike was commenced for a period of time equal to the period of any suspension by such strike.

3. If the member shall fail to perform the foregoing, or if he shall fail actually to finish his services in the assignment mentioned in 2.a., (except by reason of his death, physical disability, or default by the Company), then the waiver of liability by the Company heretofore given shall be null and void.

4. The member further agrees that the statute of limitations as a defense to any action by the Company against the member for his failure to perform during such strike is extended by a period equivalent to the duration of such strike. If the member asserts any claim or defense by reason of the expiration of time during which he can be required to perform services by virtue of any statute (such as the seven-year statute) which claim or defense is based in whole or in part on the lapse of time during such strike, the waiver by the Company is ineffective thereupon, and the statute of limitations as to the Company's rights is waived by the member automatically.

5. The automatic suspension provisions of this Article 7 shall not affect the Company's right to sue any individual writer for breach of contract arising during the period of such strike, unless such writer shall have complied with his obligations under the provisions of this subsection 5. Nothing herein contained shall be construed to deprive the Company of its right to terminate the employment contract at any time after such member shall strike or otherwise fail or refuse to perform services.

6. The provisions of this Article 7 shall be deemed included in all employment contracts between writers and Company which are now in effect and all such employment contracts which shall be entered into during the effective term of this Basic Agreement.

7. The Guild agrees that it will take such affirmative actions as may be necessary and lawful in order to require its members to perform their respective obligations under the provisions of this Article 7.

8. Notwithstanding the expiration or other termination of the effective term of this Basic Agreement, by termination or otherwise, the provisions of this Article 7 shall be and remain in full force and effect for a period of seven (7) years following the termination of any such strike, unless this covenant be sooner terminated by the written consent of Company and Guild.

9. The Guild is a corporation. Nothing in this subsection 9. shall enlarge the liability of its officers, directors, agents, and members, this subsection 9. being an additional limitation thereon. The Guild will not be held liable for unauthorized acts of its officers, agents, directors, or members; neither the Guild, nor its officers, directors, agents, or members not participating in the actions hereinafter mentioned, shall be liable for any strike, slow-down, or work stoppage, unless the same be authorized by the Guild in accordance with its by-laws, but the foregoing exemption of this sentence shall not apply unless the Guild upon request from the Company affected thereby shall proclaim promptly and publicly that such strike, slow-down or work stoppage is unauthorized, and follows such pronouncement within a reasonable time thereafter, if requested so to do by the Company affected, with disciplinary proceedings in accordance with its by-laws against the participants in such unauthorized action.

10. The Company agrees that it will not call or engage in any lockout of members.

11. In accordance with and to the extent required by Articles 11 and 12 of this Basic Agreement as to any matter arbitrable thereunder, the Guild has right to strike Company so long as the Company's wrongful failure to participate in Grievance and Arbitration procedures continues. Such action on the part of the Guild is not a waiver of right to compel Company to participate in Grievance and Arbitration procedures. If Company

shall contest the arbitrability of such issue, such issue of arbitraribility shall first be determined prior to the arbitrator's proceeding with a hearing on the merits.

12. Nothing in this Article 7 or elsewhere in this basic agreement shall be construed so as to prevent Company from changing the method of presenting a program series from live to film if a bona fide commitment or decision to make such change had been made prior to the start of such strike, and without reference to such strike.

Article 8 Credits for Screen Authorship—(General)

The Company agrees that credits for screen authorship shall be given only pursuant to the terms and in the manner prescribed in the respective, applicable Schedule "A's" attached hereto and by this reference incorporated herein, provided, however, that the respective, applicable provisions of such Schedule "A's" shall apply only to credits for screen authorship finally determined during the term hereof.

Article 9 Minimum Terms—(General)

The terms of this Basic Agreement are minimum terms; nothing herein contained shall prevent any writer from negotiating and contracting with any Company for better terms for the benefit of such writer than are here provided. The Guild only shall have the right to waive any of the provisions of this Basic Agreement on behalf of or with respect to any individual writer.

Article 14. Writers in Non-Writing Capacities (Television)

A. Nothing herein shall be construed to prohibit Company from concurrently contracting for the services of an individual as a writer, subject to all of the provisions of this agreement, and the same individual to render services in a capacity or capacities other than as a writer which services shall not be subject to this Basic Agreement, provided that separate compensation is stated for the services of such individual in the capacity of a writer, and provided that separate contracts are entered into for writing services for no less than applicable minimum. None of the compensation due the individual for his services in a capacity or capacities other than as a writer shall be offset or credited against any compensation due the individual for his services in his capacity as a writer. Nothing in this paragraph is to be construed to prevent contracting for the services of a writer as a writer and in other capacities under a type of agreement in which specified compensation is stated for each of the various capacities for which the individual is or may be required to render services, with an agreement that not less than a stated overall amount of compensation is guaranteed for a stated period, and under such an agreement only the services and compensation paid for the services of the individual in his capacity as a writer shall be services and compensation subject to this Basic Agreement (provided, however, as set forth above, that separate contracts are entered into for such writing services). Nothing in this paragraph is intended to modify or otherwise affect the definition of a writer as contained in Article 1C 1.a. hereof.

B. A person employed as a writer for a series whose duties include for that series interviewing other writers, suggesting story ideas or script changes to other writers, or recommending approval of material submitted by writers, shall be subject to this Basic Agreement (excluding Executives, Executive Producers, and Producers; and also excluding persons who are employed as bona fide Associate Producers, who do not perform services

as a writer for the series and where the above duties of such persons are incidental to their primary duties). For such writer, the minimum compensation shall be:

(i) 150% of the week-to-week or term minimum compensation provided for in Article 13B 7.s., using whichever rate is applicable to the type of employment used in the particular case, or

(ii) the compensation described in Article 13B 7.s. (2) (e) whichever of (i) or (ii) above is the greater,

(iii) or if such writer is employed at a per episode price, then the aggregate amounts paid for the subject episodes shall not be less than the minimum prescribed above had such writer been employed on a week-to-week or term basis for the period or aggregate of periods during which such writer works as such on the series.

THEATRICAL SCHEDULE A

THEATRICAL CREDITS

1. Credit shall be given on the screen for the screenplay authorship of feature-length photoplays and shall be worded "Screenplay By." The term 'screenplay' means the final script (as represented on the screen) with individual scenes and full dialogue, together with such prior treatment, basic adaptation, continunity, scenario, dialogue, and added dialogue as shall be used in and represent substantial contributions to the final script.

In the exceptional case where a writer has contributed to the development of the final screenplay but is not given screenplay credit hereunder, credit in the form "Adaptation By" may be given, but such credit, shall be subject to automatic credit arbitration as provided in subsection 18. of the Schedue A.

2. The term "story," as used through this Schedule A means all writing written substantially in whole by a writer or writers while employed by the Company, representing a contribution distinct from screenplay and consisting of basic narrative, idea, theme or outline indicating character development and action. The term "source material" means all material upon which the screenplay is based other than story as hereinabove defined, including other material on which the story is based. Credit shall be given on the screen for story authorship of feature length photoplays a. to e., inclusive.

a. When the screenplay is based upon story and upon no other source material, screen credit for a story authorship shall be given the screen writer, and shall be worded "Story By."

b. When the screenplay is based upon source material, screen credit for story authorship may be given by the Company to the source material author, and may be worded "Story By."

c. When the screenplay is based upon both story and source material and the story is substantially new or different from the source material, credit for story authorship shall be worded "Screen Story By," which credit shall be subject to automatic credit arbitration as provided in subsection 18. of Schedule A. The Company shall not thereby be limited from giving credit to the author of source material provided such credit shall indicate the form in which it is acquired. The following examples are illustrative and not intended to cover all situations: "From a Play By," "From a Novel By," "From a Saturday Evening Post Story By," "From a Series of Articles By," "From an Unpublished Story By," "Based on a Story By," "Ernest Hemingway's Old Man of the Sea," or other appropriate wording indicating the form in which it is acquired.

"Based upon a Screenplay By" is appropriate source material credit in cases in which literary material is acquired or writers are employed under circumstances in which the credit provisions of this Basic Agreement do not apply, and under contracts whereby purchaser or employer agrees to give writing credits, and if Company takes over the employment contract or acquires the material written under such contract, and subsequently employs, in relation to such material, a writer subject to this Basic Agreement.

d. When the screenplay is based upon a sequel story written by an employed writer, story credit for such sequel shall be given in the form "Story By," and the author of the source material upon which such sequel is based may be given credit "Based Upon Characters Created By," or other appropriate form of credit.

e. The Company may engage any person to write any source material (including, but not limited to the source material referred to in paragraph c., above), as an independent contractor, and may guarantee source material credit to such person as above provided.

Upon the written request of a writer made prior to his acceptance of employment in connection with a designated photoplay, or upon the written request of a then employed writer made at the time of his assignment to a designated photoplay, the Company shall notify him in writing of any then existing con-

tractual obligation to give credit for source material in connection with such photoplay. The Company shall not be thereby limited from making subsequent contractual obligations to give source material credit, as above provided, in connection with such photoplay. Neither the existence of any form of credit obligation nor the giving of any such credit information shall relieve a writer from his obligation to render services and otherwise perform as provided in his employment agreement. A Company which furnishes a writer hereunder with inaccurate or incorrect credit information shall not be deemed to be in breach of this Basic Agreement or its employment agreement with such writer, if the Company at the time of giving such credit information believes in good faith such information is correct.

The Company shall be deemed to be contractually obligated in any of the cases above mentioned if the Company in good faith considers itself so obligated.

Nothing herein contained shall limit the Company from using and purchasing source material, from entering into agreements to give source material credit therefor, as above provided, from carrying out such credit obligations as may be therein provided.

3. Screen credit on photoplays on which one writer or a team has written both the story and the screenplay shall be worded "Written By."

If a writer is entitled to "Written By" credit on a photoplay which he also produces or directs, unless the writer objects nothing herein shall prevent credit on the screen and/or in paid advertising in the following forms:

"Written and Produced By ————", or "Written and Directed By ————", or "Written, Produced, and Directed By ————".

4. Screen credit for screenplay will not be shared by more than two writers, except that in unusual cases, and solely as the result of arbitration, the names of three writers or the names of writers constituting two

writing teams may be used. A writing team is: two writers who have been assigned at about the same time to the same script and who work together for approximately the same length of time on the script. The intention and spirit of the award of credits being to emphasize the prestige and importance of the screenplay achievement, the one, two or at most three writers, or two teams, chiefly responsible for the completed work will be the only screen writers to receive screenplay credit. Story credit will not be shared by more than two writers.

5. The limitation on the number of credits provided for in subsection 4 shall apply to all feature-length photoplays except episodic pictures (such as TALES OF MANHATTAN and IF I HAD A MILLION) and revues. A revue is a feature-length photoplay in which the story is subordinate to specialties, musical numbers or sketches, and in connection with which star or featured billing is given to the actors, singers, dancers, or musicians appearing in these separate specialties, musical numbers or sketches.

6. Unless the screenplay writing is done entirely without collaboration of any other writer, no designation of tentative screenplay credit to a production executive shall become final or effective unless approved by a credit arbitration as herein provided, in accordance with the Guild rules for the determination of such credit.

7. When more than one writer has participated in the authorship of a photoplay, then all participants will have the right to agree unanimously among themselves as to which of them shall receive writing credits on the screen, provided that the form of credit agreed upon is in accordance with the terms of this Schedule A, and provided the agreement is reached in advance of arbitration, and provided that the form of such credit is not suggested or directed by the Company. If such unanimous agreement is communicated to the Company before a final determination of credits hereunder, the Company will accept such designation of credits, and such agreed credits shall become final hereunder. The Company will confirm such agreed credits by sending notice thereof to all

participants and the Guild, in the manner hereinafter provided in subsections 11. and 12. hereof.

In any case in which a foreign law or government regulation applicable to the employment of writer requires credit to be given, Company shall furnish the Guild with a copy of such law or governmental regulation together with the tentative notice of credit and the Guild agrees that credits determined shall include the minimum credit necessary to comply with such legal requirements.

8. Writing credits as finally determined hereunder shall appear on the screen on a title card immediately preceding the cards on which appear credit to the producer and the director of the photoplay, provided that the card on which appears the credit to the producer immediately precedes that of the director, and otherwise the card on which writing credits appear shall immediately precede that of the director. No other credits except source material credit, may appear on the card on which writing credits appear.

Source material credits (if they appear on the screen) and writing credits finally determined hereunder shall, subject to the foregoing, appear only in the following manner:

a. On one title card on which there appear only writing and source material credits.

b. On separate title cards on each of which there may appear any one or more of such credits, and no other credits.

c. On the main title card of the photoplay on which there may appear any one or more of such credits together with other credits.

Screen credit for the writer of the screenplay shall be accorded in the same style and size of type as that used to accord screen credit to the individual producer or director of the photoplay, whichever is larger.

Whenever source material credit, or source material and story credit given to the same writer, appears on the same title card as the screenplay credit, the screenplay credit must be the initial credit and must occupy

not less than 50% of the credit card in type at least as large in all respects as that accorded the source material credit. Wherever story credit, but no source material credit, appears on the same title card as the screenplay credit, the screenplay credit must be the initial credit and occupy not less than 60% of the card. Wherever both a source material credit and story credit given to different writers are placed on the same title card as the screenplay credit, the screenplay credit shall appear in a larger size of type on the upper 60% of such title card. Such source material credit and this story credit shall appear in a smaller size of type than that used for the screenplay credit and shall appear on the lower 40% of such title card which lower 40% of such title card shall be apportioned equally among all writers receiving such source material and story equally among all writers receiving such source material and story credit. Under the circumstances described in the immediately preceding sentence, the Company shall have the right to place the source material credit on another card without the limitations hereinabove imposed so long as such other card is not inserted between the screenplay credit and the director's credit. The foregoing provisions of this subsection and the preceding subsection shall not be applicable to contract commitments entered into prior to December 13, 1963 which contain terms contrary thereto.

9. A writer who has participated in the writing of the screenplay, or a writer who has been employed by the Company on the story, or who has sold or licensed literary material subject to this Basic Agreement, shall, for the purpose of this Basic Agreement, be considered a participant. As a participant, he shall be entitled to participate in the procedure for determination of screen credits, and in addition, in the case of a remake, any writer who has received credit either for story or screenplay in connection with the most recent production of such remake photoplay.

10. Prior to the final determination of screen credits, as provided herein, the work of participants not receiving screen credit may be publicized by the Company. After such a determination of screen credits only per-

sons receiving screen credits or source material credit may be so publicized.

11. Before the writing credits for a motion picture are finally determined (and in the case of a motion picture produced in Company's studios in the Los Angeles area, no later than three (3) business days following completion of principal photography of such motion picture, except where circumstances make it impractical), the Company will send to each participant and to the Guild concurrently a written notice which will state the Company's choice of credit on a tentative basis, together with the names of all participants, their addresses last known to the Company and if a participant is then also a director or producer of the photoplay the notice will so indicate. Where the Company deems its record of participants incomplete, it may comply with the foregoing by giving notice to each writer whose name and address are furnished by the Guild within five (5) days after the Company's request for such information, in addition to giving notice to each participant shown on its own records.

The Company shall on such notice of tentative credits, for the information of the Guild and participants, state the form of any source material credit which Company intends to use in connection with the photoplay. Such credits shall not be subject to the provisions for protest and arbitration as hereinafter provided, but the Guild shall have the right to object to the form of such a credit.

At the Company's request, the Guild may, but shall not be obligated to, make a determination of screen credits and shall so notify the participants. When a Guild determination is so made, it shall be considered a final determination.

At the request of the Guild made to the Company on commencement of principal photography of such motion picture, the Company shall furnish the Guild with a list of all persons who, to the best of the Company's knowledge, are or were participants (see subsection 9. above) with respect to such motion picture. If thereafter any other writer is engaged by Company to render writing services in or in connection with such motion picture during the principal photography thereof, the Company will promptly notify the Guild of that fact. If the motion picture involved is a remake of an earlier motion picture produced by Company, the list of writers to be supplied by the Company pursuant to this paragraph shall include the name of any writer employed by the Company to render writing services with respect to the most recent prior production by Company of such earlier motion picture and who received screen credit for such writing services.

A casual or inadvertent failure by the Company to forward the notices, lists, names or other information to the Guild or persons specified at the times or places designated pursuant to this subsection 11. shall not be deemed to be a breach of this Basic Agreement.

12. The notice specified in subsection 11. hereof, will be sent by telegraph to writers outside of Los Angeles area or by telegram, messenger or special delivery mail to writers in such area. In case of remakes the Company shall not be under any obligation to send any notice to any writer contributing to the screenplay or story of the original production unless such writer received screen credit in connection with such original production.

13. The Company will keep the final determination of screen credits open until a time specified in the notice by the Company, but such time will not be earlier than six o'clock p.m. of the fifth business day following the next day after the dispatch of the notice above specified. If within the time specified, a written request to read the script has not been delivered to the Company from any of the participants, or a written protest of the tentative credits has not been delivered to the Company from any participant or from the Guild, the tentative credits shall become final. Every protest, including that of the Guild, shall state the grounds or basis therefor in the notice thereof. The Guild agrees not to use its right of protest indiscriminately. In the event of an emergency and on Company's request, the Guild may reduce such "fifth business day" period. The Guild agrees to cooperate as fully as possible in considering such requests.

14. If a request to read the script is received by the Company from a participant within the time specified in subsection 13. hereof, or if a written protest of the tentative credits is received by the Company from a participant or the Guild within said period, the Company will withhold final determination of credits until a time to be specified by the Company which time will not be earlier than one hundred and twenty (120) hours, exclusive of Sundays and holidays, after the scripts are delivered to the Guild office in Los Angeles, or one hundred and twenty (120) hours after the Guild is notified that the scripts are available at the Company's studio, whichever is earlier. In the event of an emergency and on the Company's request, the Guild may grant a reduction of such one hundred and twenty (120) hour period. The Guild agrees to cooperate as fully as possible in considering such requests.

The tentative screen credits shall become final if no protest is timely made.

15. Upon receipt of a protest or request to read the script, the Company will deliver a copy of the script to the Guild office in Los Angeles for each participant who requests it, provided that the Company shall not be required to prepare additional copies of the script, and the Company shall notify the participants and the Guild by telegraph informing them of the name of the protesting party and the new time set for final determination.

16. If a unanimous designation of credits as provided for in subsection 7. hereof or a request for arbitration as hereinafter provided is not communicated to the Company within the time limit set for the final determination of credits, the Company may make the tentative credits final.

17. Any notice specified in the foregoing paragraphs shall, unless a specified form of service thereof is otherwise provided for herein, be sent by the Company by telegraphing, mailing or delivering the same to the last known address of the writer or may be delivered to the writer personally.

18. Unless a unanimous agreement has been reached in accordance with subsection 7. hereof, any participant

or the Guild, may within the period provided for in subsection 14. hereof, file with the Company at its Studio and the Guild at its Los Angeles office a written request for arbitration of credits. In any case where automatic credit arbitration is required under this Schedule A the Guild will be deemed to have made a written request for arbitration of credits, at the time the Company submits the notice of tentative credits, and in such case Company will immediately make available to the Guild the material as provided for under this subsection.

The Guild through its arbitration committee shall, within ten business days thereafter, make and advise the Company of its decision within the limitations of this Schedule A. In the event the decision of the arbitration committee is not rendered within said period, as the same may have been extended by the Company, the Company may make the tentative credits final, provided the terms and provisions of this subsection 18. have been fully complied with by the Company.

In the event of an emergency and upon the Company's request that the time for arbitration be shortened, the Guild agrees to cooperate as fully as possible. If the material is voluminous or complex, or if other circumstances beyond the control of the Guild necessitate a longer period in order to render a fair decision, and the Guild requests an extension of time for arbitration, the Company agrees to cooperate as fully as possible.

Prior to the rendition of the decision said committee may make such investigations and conduct such hearings as may seem advisable to it. Immediately upon receipt of said request for arbitration, the Company shall make available to the Guild three (3) copies of the script, and three copies of all available material written by participants and three copies of all available source material, provided, however, that if three copies of any such material shall not be available, Company shall only be required to provide such copies as are available but in such case the time within which the committee may be required to render its decision as provided for herein shall be extended from ten days to twenty days. In addition, the Company shall cooperate with the arbitra-

tion committee to arrive at a just determination by furnishing all available information relative to the arbitration. Upon request of the arbitration committee, the Company shall provide the committee with a copy of the cutting continuity if it is available at the time of arbitration.

The decision of the Guild arbitration committee, and any Board of Review established by the Guild in connection therewith, with respect to writing credits, in-so-far as it is rendered within the limitations of this Schedule A, shall be final, and the Company will accept and follow the designation of screen credits contained in such decision and all writers shall be bound thereby.

19. The decision of the Guild arbitration committee may be published in such media as the Guild may determine. No writer or Company shall be entitled to collect damages or shall be entitled to injunctive relief as a result of any decision of the Committee with regard to credits. In signing any contract incorporating by reference or otherwise all or part of this Basic Agreement, any writer or Company specifically waives all rights or claims against the Guild and/or its arbiters or any of them under the laws of libel or slander or otherwise with regard to proceedings before the Guild arbitration committee and any full and fair publication of the findings and/or decisions of such Committee. The Guild and any writer signing any contract incorporating by reference or otherwise or referring to this Schedule A, and any writer consenting to the procedure set forth in this Schedule A, shall not have any rights or claims of any nature against any Company growing out of or concerning any action of the Guild or its arbiters or any of them, or any determination of credits in the manner provided in this Schedule A, and all such rights or claims are hereby specifically waived.

20. In the event that after the screen credits are determined as hereinabove provided, material changes are made in the script or photoplay, either the Company or a participant and the Guild jointly may reopen credit determination by making a claim to the Guild or Company, as the case may be, within forty-eight (48) hours

after completion of the writing work claimed to justify the revision of credits, in which case the procedure for determining such revised credits will be the same as that provided for the original determination of credits.

The Company agrees to make revisions in advertising material previously forwarded to the processor or publisher to reflect such redetermined credits, provided that such revisions can physically and mechanically be made prior to the closing date of such processor or publisher and at reasonable expense and provided the processor or publisher has not yet commenced work on that part of the material which the change would affect.

21. No writer shall claim credit for any participation in the screen authorship of any photoplay for which the credits are to be determined by the procedure herein provided for prior to the time when such credits have in fact actually been so determined, and no writer shall claim credits contrary to such determination.

22. In any publicity issued or released prior to the final determination of credit as herein provided, the Company may include such screenplay or screenplay and story credits as the Company may in good faith believe to be fair and truthful statement of authorship. After such final determination of credits, the Company shall not issue or release any publicity which shall state screenplay or screenplay and story authorship contrary to such determination. No casual or inadvertent breach of the foregoing shall be deemed to constitute a breach by the Company.

Writing credit, but not necessarily in the form specified in this Schedule A, shall be included in publicity releases issued by the Company relating to the picture when the producer and the director are mentioned. The writing credit shall also be included in screening invitations issued by the Company where the credit of the producer or director are included. Prior to a final determination of credits the Company shall include those credits which it in good faith believes to be a fair and truthful statement of authorship.

Screenplay or screenplay and story credit in accordance with the final determination of such credit will be

given on any paid advertising issued anywhere in the world, provided such advertising is prepared by the Company in the Continental United States and is controlled by the Company where such advertisement is used; it being understood that in such advertising prepared prior to final determination of screenplay and story credits, the Company shall include such screenplay or screenplay and story credit as the Company may in good faith believe to be a fair and truthful statement of authorship. After final determination of credits, the Company shall not prepare for issuance any advertising which shall state screenplay or screenplay and story authorship contrary to such final determination.

Where there is only a single writer on a project and if a paid advertisement is issued in which that writer would have received credit hereunder had there been a final determination of credit at that time, then such writer shall be given credit in such advertisement in accordance with the credit requirements of this Schedule A.

In forms of advertising covered hereunder the names of the individual writers accorded screenplay or screenplay and story credit for a photoplay will appear in the same size and style of type as that in which the name of either the individual producer of the photoplay or, the director of the photoplay shall appear in such advertising, whichever is larger. Provided, however, that:

a. If three (3) or more writers share screenplay credit, then the Company shall not be required to use, for the advertising credit to which such three (3) or more writers are entitled, an area in excess of the minimum area that would be occupied by the names of the first two (2) of such writers, if only such first two (2) writers were entitled to share screenplay credit; it being understood that for such purpose the Company may diminish height of the type in which the names of the three (3) or more writers appear in addition to narrowing from side to side the names of such three (3) or more writers; it being further understood that for the purpose of determining which of the writers are the first two (2), the order in which such writers appear in the notification of the Guild's determination reached in its credit arbitration proceedings shall control; and

b. Where a writer entitled to screenplay credit is also entitled to credit as the director and/or producer of the photoplay, then the name of such writer need only be mentioned once in such advertising, provided, however, that he receives credit as a writer; provided further that the order of credit as between writer, producer and director shall be the same as the order with respect to which such credits are given on the screen; and

c. In giving such credit on twenty-four (24) sheets, the names of the individual writers shall in no event appear in type less than 3½ inches in height, or if the screenplay or story credit is shared by more than two (2), in type less than 2½ inches in height; and

d. In giving such credit of advertising covered hereunder, other than on twenty-four (24) sheets the names of the individual writers shall in no event appear in type of a height less than 15% of the height of type used for the title of the photoplay, or if there are two (2) titles of the photoplay, the larger title of the photoplay. Company may seek a waiver of the double billing provision, in particular cases such as the "Beau Geste" ads and the Guild will not unreasonably withhold such waivers.

In all cases the location of the credit accorded to any writer under this subsection 22 shall be discretionary with the Company.

Where the title of the photoplay is in letters of varying sizes, the percentage above referred to shall be based on not less than the average size of all the letters in such title.

The foregoing obligation to accord advertising credit shall be limited to screenplay or screenplay and story credit and shall not apply:

(1) To group advertising, i.e., where more than one (1) photoplay is advertised; provided, however,

that with respect to this exception and the following "teaser" exception, if the individual producer or individual director is mentioned the writer shall also be mentioned, unless no writer is assigned.

(2) To so-called "teaser" advertising;

(3) To advertisements less than eight column inches in size, but if the names of two or more persons who are the producer and director are mentioned the writer shall also be mentioned;

(4) To "trailer" advertising, except where the individual producer or director is mentioned;

(5) Other advertising on the radio or television;

(6) Where credit is given neither to the individual producer nor director of the photoplay;

(7) To special advertising relating only to the source material on which the picture is based, or author thereof, any member or members of the cast, the director, individual producer, or other personnel concerned in its production, or similar matters.

Advertising shall be deemed to have been prepared hereunder when the Company has forwarded the finished copy therefor to the processor or publisher. The Company agrees, however, to revise advertising prepared prior to the final determination of credits so as to show the screenplay or screenplay and story credit as finally determined, if such revision can physically and mechanically be made prior to the closing date of such processor or publisher and at reasonable expense, and provided the processor or publisher has not yet commenced work on that part of the material which the change would affect.

The Company shall require that all writing credits as they appear on the screen appear in any published version of the whole or substantial part of a picture script, and in any novel based on the screenplay, provided that with respect to any novel based on such screenplay the credit shall indicate that such novel is based on such screenplay. Such writing credit shall appear on the title page in the same size and style of type used for the writer of the novel. If the name of the writer of the novel appears on the cover the "screenplay" or "written by" credit

shall also appear on the cover in the same size and style of type as the writer of the novel, provided, however, that the writing credit need not so appear if the writer of the screenplay is the writer of the novel. The contract with the publisher shall provide that this provision is for the express benefit of the writer and the Guild, and that the publisher will comply with such requirements. But the failure of a publisher to comply with any of such requirements shall not constitute a breach by the Company.

In connection with the radio or television broadcast of a half-hour or more in length, the whole or nearly the whole of the entertainment portion of which consists of the adaptation of a screenplay or substantial part thereof, the screenplay or screenplay and story credit as it appears on the screen shall be given either orally or visually.

Where the major writing contribution to a photoplay is in the form of narration, credit for such narration shall be given and worded in the following form: "narration written by." When a narration credit is given in lieu of a screenplay credit on any photoplay, then such narration credit shall be subject to all of the rights and limitations as are provided in this subsection 22. with respect to screenplay credit.

If hereafter the Company distributes or licenses the distribution of a souvenir program or theatrical program of a motion picture hereunder, or a phonograph record or phonograph album made from the sound track of a motion picture hereunder, and the individual producer or director of such picture is named in his capacity as such in such program or on the liner, cover or jacket of such album or records, then the writer shall also be named. The size of such credit as specified under this Schedule A shall be related to the size of the title as it is used in the listing credit for such picture on such program, liner, cover or jacket.

If in giving credits with relation to a product, the Company gives a "produced by" and also a "directed by" credit then Company shall require the writer's credits to be given in accordance with the provisions of this

Schedule A. The failure of a third party to comply with such requirement shall not constitute a breach by Company.

Where the Company supplies written handouts to reviewers and critics it will list writing credits, if they have theretofore been determined.

No casual or inadvertent breach of any of the foregoing shall be deemed to constitute a default, or a breach by the Company of this Basic Agreement.

23. In connection with "sneak" previews before the first general release of a photoplay in the United States, the Company shall give such screenplay or screenplay and story credits as the Company may in good faith believe to be a fair and truthful statement of authorship, but it shall be the obligation of the Company in good faith to have such credit determined prior to such sneak previews; and there shall be no other preview or theatrical showings of any kind except sneak previews, until correct writing credit has been determined as herein provided and included in the main title.

24. The provisions of this Schedule A shall govern the determination of writing scripts for shorts (as defined in the Basic Agreement) based upon written scripts, except that:

a. Such writing credits shall appear in forms selected by the Company. In this connection, the Company agrees to use forms of credit which represent a fair and truthful statement of authorship.

b. The location of screen credit shall be discretionary with the Company and such credit may appear on a card with other credits.

c. The right of protest shall be limited to participants. Protests shall be directed only to improper or untruthful statements of the facts of authorship, rather than to the form in which such authorship is stated.

d. The period of time specified in paragraph N hereof shall be forty-eight (48) hours in place of one hundred and twenty (120) hours.

e. The period of time specified in paragraph R shall be three (3) business days in place of ten (10) business days, and the arbitration decision shall not affect the form of the writing credit.

f. The provisions of subsection 22. requiring the giving advertising credit, shall not apply to shorts, but if such writing credits are advertised, they shall be a fair and truthful statement of authorship.

25. In connection with the sale, assignment, or licensing of any literary material or rights therein, which material is subject to the credit provisions of this Schedule, Company shall obtain an acknowledgment in writing that the purchaser, assignee or licensee, as the case may be, will abide by all of the obligations incurred to writers by Company under the terms and provisions of this Schedule A. Upon the execution of such an acknowledgment, Company shall be considered to have fully complied hereunder and thereupon shall be relieved of all obligations under this Schedule A, with respect to such material or rights therein, as the case may be.

26. a. Company will submit to the office of the Guild, 8955 Beverly Boulevard, Los Angeles, California 90048, attention of its Executive Director, a copy of the initial and subsequent campaign advertising material, prior to the issuance or distribution of such advertising material. If at the time of such submission, the Company has the copy of the souvenir program, theatrical program, liner, cover or jacket referred to in subsection 22. above or the copy of the title and cover page of the novelization, referred to in subsection 22. above, the Company will also furnish such copy to the Guild at such time. If the exigencies of time so require, Company may comply with the above by submitting such advertising material to the office of Writers Guild of America, East, Inc., 22 West 48th Street, New York 36, New York, Attention of its Executive Director. If within twenty-four (24) hours after such submission in Los Angeles or if within thirty-six (36) hours after such submission in New York the Guild protests by telegram delivered (collect if desired)

to the Company, that such advertising material does not conform to the provisions of this Schedule A, subsection 22. above, then the Guild may, within twenty-four (24) hours after making such protest, submit the dispute to arbitration under this subsection 26. The arbitrator shall make his decision and deliver it to the respective offices of the Company and Guild within twenty-four (24) hours after such submission to arbitration.

The arbitrator shall be selected in accordance with the following procedure. There shall be a panel of ten (10) arbitrators designated as Arbitrators Number 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, respectively. The first such arbitration shall be submitted to Arbitrator Number 1, the second such arbitration (or the first such arbitration if Arbitrator Number 1 is unavailable therefor) shall be submitted to Arbitrator Number 2, and so on in rotation. The initial panel of arbitrators is:

Ben Aaron	Arbitrator Number 1
Sidney Justin	Arbitrator Number 2
Dean Richard Maxwell	Arbitrator Number 3
Addison Mueller	Arbitrator Number 4
Seymour Bricker	Arbitrator Number 5
Orrin B. Evans	Arbitrator Number 6
Harry Keaton	Arbitrator Number 7
Roger Davis	Arbitrator Number 8
Leon Kaplan	Arbitrator Number 9
Walter Bruington	Arbitrator Number 10

The arbitration shall be held in Los Angeles, California. The cost of such arbitration shall be borne equally by the Company and the Guild. The Company and Guild shall each bear its own attorneys' fees.

If the arbitrator decides that the Guild's protest is valid, he must designate in what respect such advertising material does not conform to the provisions of this Schedule A, subsection 22. above. This shall be the limit of the arbirtator's authority. The decision of the arbitrator shall be binding upon the Company, the Guild, and the writer or writers involved. Company shall not issue any such advertising material which would violate such decision.

It is hereby agreed that if the arbitrator in any arbitration under the provisions of this subsection 26. does not make his decision and deliver it to the respective

officers of the Company and Guild within 24 hours after the dispute has been submitted to him under this subsection 26., then, at any time thereafter prior to the making and delivering of such decision, either the Guild or the Company may elect to remove the dispute from such arbitrator and re-submit it to the next arbitrator in rotation. If so re-submitted, such next arbitrator in rotation shall make his decision and deliver it to the respective officers of the Company and Guild within 24 hours after such re-submission. The aforesaid election and re-submission shall be exercised and effected by written notice by the Guild or the Company, as they case may be, to the other party. If the first arbitrator shall make and deliver his decision after the expiration of 24 hours after the dispute has been submitted to him and prior to the re-submission of the dispute to the next arbitrator in rotation as aforesaid, such decision shall have the same effect as though it had been made and delivered by the first arbitrator within 24 hours after the original submission of the dispute to him.

If the Guild fails to submit its protest in the manner and within the time period specified above, or if the Guild fails to submit the dispute to arbitration in the manner and within the time period specified above, then in either of such events the Guild shall be conclusively deemed to have approved such advertising material and such approval shall be binding upon the Guild and the writer or writers involved. The Company shall not issue or distribute any advertising material prior to the expiration of the period within which the Guild may protest nor in the event of a protest by Guild (submitted in the manner and within the time period specified above) prior to the expiration of (i) seventy-two (72) hours after such advertising material has first been submitted as aforesaid by Company to the Guild in Los Angeles or (ii) eighty-four (84) hours after such advertising material has first been submitted as aforesaid by Company to the Guild in New York, as the case may be.

In determining any twenty-four (24) or thirty-six (36) hour period referred to above in this subsection

26 a., there shall be excluded Saturdays, Sundays, and the six holidays recognized in the motion picture industry, to-wit: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

Time is of the essence as to all of the provisions of this subsection 26.

b. Company will forward, wherever practical, by Air Mail, to the Guild, to the attention of its Executive Director, a copy of each of its press books immediately upon its publication and before its general distribution. The present address of the Guild is 8955 Beverly Boulevard, Los Angeles, California 90048.

Such press books shall conform to the provisions of this Schedule A, subsection 22., above.

The Guild shall send a written answer to the Company immediately upon receipt of the Company's press book. If Company does not receive such an answer from the Guild within six days from the time the Company has sent the press book to the Guild, the Guild shall be considered to have approved the press book, and such approval shall be binding upon the Guild and the writer or writers involved. If within such six days the Guild should protest to the Company that any advertising contained in such press book neither previously approved as part of initial advertising nor as part of subsequent advertising material, does not conform with the advertising provisions quoted above, the Guild and the Company shall appoint a joint committee which shall immediately determine the validity of the Guild's protest. If the committee determines it is a valid protest, it may specify the corrections, if any, necessary to conform the advertising with the above mentioned advertising provisions.

27. If the Company shall sell or license the so-called stage presentation rights to a screenplay with respect to which a writer has received a "written by," "story by," or "screen story by" screen credit, then Company shall provide in the contract of sale or in the license that the writer shall be accorded appropriate credit reflecting such screen credit in (1) the program for stage presentation based upon such screenplay, (2) newspaper advertising of one-half page or larger for the Broadway

shows of such stage presentation, and (3) billboards and lobby displays for such stage presentations, but only if general credits are also accorded in such programs, newspaper advertising, lobby displays, and billboards, e.g., director credit, stage play writer credit, producer credit, choreographer credit, and the like. The failure of the purchaser or licensee of the stage presentation rights to comply with such contractual requirements shall not constitute a breach of this agreement by the Company.

28a. Notwithstanding any other provision of this Schedule A, but subject to the provisions of subsection 28d. below, if the individual producer or director is accorded a "production" or "presentation" type of credit, such as "A Sam Jones Production" or "A Sam Jones Picture" or "A Sam Jones Presentation," on the screen (wherever such credit may appear on the screen other than in the position where such individual producer or director credit would normally appear pursuant to this Schedule A), in advertising (wherever such credit in advertising may appear), such "production" or "presentation" type of credit may be accorded in a different style and/or a different size (whether larger or smaller) of type than used to accord credit to the writer of the screenplay, subject to the following:

(1) If such "production" or "presentation" type credit on the screen is in such different style or different size of type, it shall not be placed on the screen between the card according credit to the writer of the screenplay and the card according credit to the director of the photoplay.

(2) If such "production" or "presentation" type credit is used more than once in any advertisement and appears in larger size type than that accorded to the writer of the screenplay in such advertisement, it may not be placed on the same line as such writer's credit in such advertisement.

28b. Subject only to the provisions expressly relating thereto contained in this subsection 28, the matter of "production" or "presentation" type credit shall not be governed by this Basic Agreement; it being agreed that

the Company may accord such "production" or "presentation" type credit as it may see fit.

28c. The obligation under subsection 22. of this Schedule A to mention the writer in group advertising or so called "teaser advertising or trailer advertising" where the individual producer or director is mentioned shall not apply if such mention of the individual producer or director is a "production" or "presentation" type credit.

28d. The provisions of a. b. and c. of this subsection 28. are modified to the extent required by the following:

Wherever a single presentation or production credit is accorded to any individual or individuals in advertising, the writer or writers who are entitled to credit on the screen pursuant to the provisions of this Schedule A shall receive credit in such advertising in type size at least 20% of the size of the type of the main title or 50% of the size of the type of the production or presentation credit, whichever is greater, as such title or credit appears on the advertising involved. If more than one such presentation or production credit is accorded to any individual or individuals, then the size of the writing credits shall be increased by an additional 5% of the main title for each such additional presentation or production credit (e.g., a total of 25% for two, 30% for three), or shall be in 50% of the size of the largest of such presentation or production credits, whichever is larger.

If two or more names are used on one line in one such presentation or production credit it will, nevertheless, count as one presentation or production credit (e.g., "A John Jones-Bob Brown Presentation"; but not "A John Jones Production of a Bob Brown Presentation").

The credit accorded to the author of the source material is not subject to the restrictions of this subsection and shall not be considered a "production" or "presentation" credit.

All credit requirements of existing contracts or appropriate credits contained in copy prepared prior to December 13, 1966, which conflict with the foregoing provisions shall control.

The provisions hereof shall further not apply to impersonal corporate presentation or production credits where the corporate name is wholly impersonal such as "Columbia Pictures Corp. presents," and shall further not apply to the names of any distributing company, whether or not impersonal, including Walt Disney Productions.

The foregoing provisions shall not apply to subparagraphs (1), (2), (4), (5), and (6) of subsection 22d. of this Schedule A.

29. On the request of either party for modification of this Schedule A on the ground of hardship in the application of any of its provisions, the other party agrees to meet and negotiate with respect to changes to eliminate such claimed hardships.

30. Where used in this Schedule A, the term "writer" or "employed writer" shall have the same meaning as provided in Article 1 B.1.a. of the Basic Agreement.

TELEVISION SCHEDULE A

TELEVISION CREDITS

1. Credit shall be given on the screen for the authorship of stories and teleplays and shall be worded "Teleplay by", or "Story by", or "Written by" (for story and teleplay) or, in the case of variety and audience participation shows only, "Written by", or "Special material by", as the case may be. The term "Teleplay" means the script as produced on the television screen or as shown in its final form, by whatever means the medium may employ. In the exceptional case where a writer has contributed to the development of the final teleplay but is not given teleplay credit hereunder, credit in the form "Adaptation by" may be given, but such credit shall be subject to automatic credit arbitration as provided in subsection 17. of Schedule A, Television.

If a writer is entitled to "Written by" credit on a television film which he also produces or directs, unless the writer objects nothing herein shall prevent according credit on the screen and/or in paid advertising in the following forms:

"Written and Produced By ————", or Written and Directed By ————", or "Written, Produced, and Directed By ————".

2. The term "Story" means all writing written substantially in whole by a writer or writers as hereinbefore defined, representing a contribution distinct from Teleplay and consisting of basic narrative, idea, theme or outline indicating character development and action. The term "Source material" means all material upon which a teleplay is based other than the story, as hereinabove defined, including other material on which the story is based. Credit shall be given for story authorship of teleplays to the extent and in the forms provided in the following paragraph a. to e. inclusive:

a. When a teleplay is based upon story and upon no other source material, credit for story authorship shall be given to the television writer and shall be worded, "Story By."

b. When the teleplay is based upon source material, no story authorship credit may be given to the television writer (except pursuant to paragraph c. and d. below) but, subject to contractual commitments in effect on June 19, 1960 with source material authors, the source material author may not be given "Story by" credit, it being understood and agreed, however, that the company may give to the source material author any appropriate credit other than the two words "Story by", and that the credit given to source material authors may include, but shall not be limited to, the source material credits referred to in paragraph c. below.

c. When the teleplay is based upon both story and source material and the story is substantially new or different from the source material, credit for story authorship shall be worded, "Television Story by", which credit shall be subject to automatic credit arbitration as provided in subsection 17. of this Schedule A. The Company shall not thereby be limited from giving credit to the author of source material provided such credit shall indicate the form in which it is acquired, such as, for example, "From a play by", "From a novel by", "From a radio play by", "From a Saturday Evening Post story by", "From a series of articles by", "From an unpublished story by", "Based upon a short story by", or other appropriate wording.

d. Where the teleplay is based upon a sequel story, credit for such sequel story shall be given in the form "Story by" and the author of the source material upon which such sequel is based may be given credit, "Based upon characters created by", or other appropriate form of credit. If the source material is in the form of a format or characters, then the source material credit may be given in the following forms: "From the format by", or "Characters created by".

e. Upon the written request of a writer made prior to his acceptance of employment in connection with a designated program or upon the written re-

quest of a then employed writer at the time of his assignment to a designated program, the Company shall notify him in writing of any then existing contractual obligations to give credit for source material in connection with such program. The Company shall not thereby be limited from making subsequent contractual obligations to give source material credit as above provided in connection with such program. Neither the existence of any form of credit obligation nor the giving of any such credit information shall relieve a writer from his obligation to render services and otherwise perform as provided in his employment agreement. A Company which furnishes a writer hereunder with inaccurate or incorrect information shall not be deemed to be in breach of this Basic Agreement or its employment agreement with such writer if the Company at the time of giving such credit information believes in good faith such information is correct.

The Company shall be deemed to be contractually obligated in any of the cases above mentioned if the Company in good faith considers itself so obligated.

Nothing herein contained shall limit the Company from using and purchasing source material, from entering into agreements to give source material credit therefor, as above provided, and from carrying out such credit obligations as may be therein provided.

In the case of a Variety or Audience Participation program on film where a writer has contributed material and is not otherwise entitled to be included in the "Written by" credit customarily shared by such writers, additional credit may be given for such material in the form "Special Material by". Writers of Variety and Audience Participation Shows shall be deemed included under all the provisions of this Schedule A, the same as writers of dramatic programs despite the fact that only "Story" and "Teleplay" are hereinafter referred to, and when credits for Variety or Audience Participation Shows are involved hereunder the terms "Written by" and "Special Material by" shall be deemed included whenever the terms "Story by" and "Teleplay by" appear.

3. Screen credit for teleplay will not be shared by more than two (2) writers, except that in unusual cases, and solely as the result of Guild arbitration provided hereunder, the names of three (3) writers or the names of two (2) writing teams may be used. A writing team for the purpose of this Schedule A only shall be deemed to be two writers (excluding production executives) who have been assigned at about the same time to the same script and who work together for approximately the same length of time on the script. The same limitation shall apply to screen credit for story authorship by writers hereunder.

4. The limitation as to the number of writers receiving credit provided for in subsection 3. shall apply to all teleplays except multiple-story teleplays, revues, Variety and Audience Participation shows.

5. Unless the writing of the story and/or teleplay is done entirely without the collaboration of any other writer, no story or teleplay credit to a production executive shall become final or effective unless approved by a credit arbitration as herein provided, in accordance with the Guild rules for the determination of such credit. Such credit arbitration, however, shall be without prejudice to the Company's position in any arbitration relating to payment pursuant to Article 13B.7C. A production executive for the purpose hereof shall be defined as any employee of Company customarily hired for or engaging in activities considered part of the managerial phase of company's business activities. If Company shall claim that a writer has been assigned to write a teleplay based upon a story composed or created by a production executive, the story and teleplay shall be subject to an automatic arbitration pursuant to the provisions of this Schedule A.

6. When more than one (1) writer has participated in the authorship of a story and/or teleplay, then all participants will have the right to agree unanimously among themselves as to which of them shall receive writing credits on the television screen, provided that the form of credit agreed upon shall be in accordance with the terms of this Credits schedule, and provided further the agree-

ment is reached in advance of arbitration and the form of such credit is not suggested or directed by the Company. If such unanimous agreement is communicated to the company before the final determination of credits hereunder, the company will accept such designation of credits, and such agreed credits shall become final hereunder. The company will confirm such agreed credits by sending notice thereof to all participants and to the Guild in the manner provided in this Schedule, subsections 10.-11. In no case shall a writer grant to another writer, or accept for himself, credit which is not properly earned.

7. Writing credit, required under the provisions of this Schedule A and as finally determined hereunder, shall appear on a separate card or cards on the television screen subject to the following conditions:

a. Writing credit (other than Source Material credit) may appear on the same card on which appears the title of the particular episode, but in no event in size of type less than 30% of the size of the title; or

b. Writing credit, including Source Material credit, if given, may appear on a separate card or cards immediately following the title card of the particular episode; or

c. Writing credit, including Source Material credit, may appear immediately prior to or following immediately after the director's credit. Writing credits placed pursuant to this subparagraph c. shall not be more than the second personal credit prior to the beginning or subsequent to the ending of the teleplay as the case may be. For this purpose, however, if Source material credit appears on a separate card from the other writing credits these two separate cards immediately succeeding each other shall count as one credit. Commercials or a credit to the production company shall not be deemed to be a "personal credit" for the purposes of this provision.

d. Credit for Anthology Series. With respect to anthology series only, the company shall give the writing credits in either of the positions set forth in

a. or b. above unless the initial sponsor of the series, having the right to to so pursuant to its agreement with the Company, requires the Company to refrain from placing the credit in either of such positions. In such case, however, the Company shall place the writing credits as provided in c. above.

e. The credit given to a television writer or writers pursuant to this Schedule A shall precede (but need not immediately precede) source material credit except that

(1) the obligation imposed by this sentence should be subject to contractual commitments, heretofore or hereafter entered into by the Company with any source material author, requiring that source material credit precede television writing credit;

(2) the Company shall in any event have the right to give precedence to source material credit if the source material author's name has marquee value.

For purposes of illustration, a few examples of names having marquee value are: Kathleen Norris, Paddy Chayefsky, Ernest Hemingway, Erle Stanley Gardner, George Axelrod, Ogden Nash and John Van Druten.

If roller type credits are used, the Company in lieu of the use of a separate card shall set the writing credits in such fashion that when they are centered on the screen, no other credit shall be visible.

Source Material credit may be given on the same card on which other writing credits appear provided that writing credit (other than Source Material credit) shall be the first credit appearing on such card and provided further than the Source Material credit shall not occupy more than 40% of the space on such card and is not displayed more prominently than the other writing credits appearing thereon; provided, however, that this provision shall be subject to and not affect any individual personal service agreements in effect on March 18, 1957. In no event, however, shall Source Material credit be included on the card on which the other writing credits appear with the title of the particular episode.

Teleplay credit shall precede story credit, it being understood that if both are on the same card, teleplay credit shall be the first credit.

8. A Company shall not enter into any contract to give credit to any writer or writers hereunder for reasons of the writer's prestige or for any reasons other than earned credit, and writing credit for any writer or writers shall be assigned solely on the basis of actual contribution to the story or teleplay as determined in the event of question by the Credits Arbitration machinery of the Guild.

9. The Guild shall set up and maintain a record and listing of credits comparable to the Bulletin of the Academy of Motion Picture Arts and Sciences for the benefit of writers engaged in writing for television. Any participant in the writing of a story for television or in the writing of a teleplay or any other material which shall appear on the television screen, whose contribution is deemed insufficient to warrant visual television screen credit, shall be eligible to have the nature of his contribution recorded in the aforementioned Bulletin and be made available to such Writer for exploitation purposes, provided, however, that the final decision as to his contribution and what credit he shall receive and where, in the event of question, rests solely with the arbitration machinery of the Guild. Company shall be under no obligation with respect to the establishment or maintenance of any such records or listings.

10. A writer who has participated in the writing of the teleplay or of the story (other than Source Material) with respect thereto and, in the case of a remake, any writer who has received credit for story (other than Source Material) or teleplay in connection with the most recent production of such remake television film shall, for the purposes of this Basic Agreement, be considered a participant. As a participant, he shall be entitled to participate in the procedure for determination of writing credits.

11. Before the writing credits are finally determined, the Company will send concurrently to each participant and to the Guild written notice, which will state the Company's choice of credits on a tentative basis, together with the names of all participants and their addresses last known to the Company. Where the Company deems its record of participants incomplete, it may comply with the foregoing by giving notice to each writer whose name and address are furnished by the Guild within two (2) days after the Company's request for such information, in addition to giving notice to each participant shown in its own records.

The Company shall on such notice of tentative credits, for the information of the Guild and participants, state the form of any source material credit which the company intends to use in connection with the photoplay. Such credits shall not be subject to protest and arbitration as hereinafter provided but the Guild shall have the right to object to the form of such credit.

At the Company's request, the Guild may, but shall not be obligated to, make a tentative determination of screen credits and send out the notice.

12. The notice specified in subsection 11. hereof, will be sent by telegram to writers outside of Los Angeles or New York area, depending on the place of production, or by telegram, messenger or special delivery mail to writers in such areas. No notice will be sent to writers outside of the United States or writers who have not filed a forwarding address with the Company. In case of remakes the Company shall not be under any obligation to send any notice to any writer contributing to the teleplay or story of the original production, unless the writer has received credit.

13. The Company will keep the final determination of screen credits open until a time specified in the notice by the Company but such time will not be earlier than six o'clock p.m. of the next business day following the next day after the dispatch of the notice above specified. If within the time specified, a written protest of the tentative credits has not been delivered to the Company from any participant or from the Guild, the tentative credits shall become final. Every protest, including that of the Guild, shall state the grounds or basis therefore in the notice thereof. The Guild agrees not to use its right of protest indiscriminately.

14. If a written protest of the tentative credits is received by the Company from a participant or the Guild within said period, the Company will withhold final determination of credits until a time to be specified by the Company which time will not be earlier than one hundred twenty (120) hours after the Company delivers to the Guild, all of the scripts involved.

In any case where the Guild is required to read more than four (4) scripts pursuant to a protest hereunder, the Company shall be required to add to the one hundred twenty (120) hours above provided a period of twenty-four (24) hours for each additional script or fraction thereof.

If the material is voluminous or complex, or if other circumstances beyond the control of the Guild necessitate a longer period in order to render a fair decision, and the Guild requests an extension of time for arbitration, the Company agrees to cooperate wherever practicable.

15. Upon the receipt of a protest, the Company will deliver three (3) copies of the final script and three (3) copies of all material written by the participants and three (3) copies of all available source material to the Guild offices in Los Angeles or New York and the Company shall notify the participants and the Guild by telegram informing them of the name of the protesting party and the new time set for final determination, provided that if three (3) copies of all the material cannot be provided the arbitration period is to be extended from one hundred and twenty (120) hours to five (5) business days.

16. Any notice specified in the foregoing paragraphs shall unless a specified form of service thereof is otherwise provided for herein, be sent by the Company be telegraphing, mailing or delivering the same to the last known address of the writer or may be delivered to the writer personally, and to the Guild at the last known address of the Guild in Los Angeles or New York.

17. Unless a unanimous agreement has been reached in accordance with subsection 6. hereof, any participant or the Guild may within the period provided for in subsection 13. hereof, file with the Company at its Studio

and the Guild at its Los Angeles or New York office, as the case may be, a written request for arbitration of credits. In any case where automatic credit arbitration is required under this Schedule A, the Guild will be deemed to have made a written request for arbitration of credits at the time the Company submits the notice of tentative credits and in such case the Company will immediately make available to the Guild the material as provided for under subsection 15. of this Schedule A. The Guild through its arbitration committee shall, within the time limit specified by the Company make and advise the Company of its decision within the limitations of this Schedule A. In the event the decision of the arbitration committee is not rendered within said period, as the same may have been extended by the Company, the Company may make the tentative credits final, provided the terms and provisions of this Schedule have been fully complied with by the Company.

Prior to the rendition of the decision, said committee may make such investigations and conduct such hearings as may seem advisable to it. The Company shall cooperate with the arbitration committee to arrive at a just determination by furnishing all available information relative to that arbitration. Upon request of the arbitration committee, the Company shall provide the Committee with a copy of the cutting continuity if it is available at the time of arbitration.

The decision of the Guild arbitration committee with respect to writing credits, including any Board of Review established in connection therewith, insofar as it is rendered within the limitations of this paragraph shall be final, and the Company will accept and follow the designation of screen credits contained in such decision and all writers shall be bound thereby.

18. The decision of the Guild arbitration committee may be published in such media as the Guild may determine. No writer or Company shall be entitled to collect damages or shall be entitled to injunctive relief as a result of any decision of the committee with regard to credits. In signing any contract incorporating by reference or otherwise all or part of this Basic Agreement,

any writer or Company specifically waives all rights or claims against the Guild and/or its arbiters or any of them under the laws of libel or slander or otherwise with regard to proceedings before the Guild arbitration committee and any full and fair publication of the findings and/or decisions of such committee. The Guild and any writer signing any contract incorporating by reference or otherwise refering to this subsection or any writer consenting to the procedure set forth in this subsection, shall not have any rights or claims of any nature against any Company growing out of or concerning any action of the Guild or its arbiters or any of them, or any determination of credits in the manner provided in this subsection, and all such rights or claims are hereby specifically waived.

19. In the event that after the screen credits are determined as hereinabove provided, material changes are made in the script or photoplay, either the Company or participant and the Guild jointly may reopen credit determination by making a claim to the Guild or Company as the case may be, within forty-eight (48) hours after completion of the writing claimed to justify the revision of credits, in which case the procedure for determining such revised credits will be the same as that provided for the original determination of credits.

The Company agrees to make revisions in advertising material previously forwarded to the processor or publisher to reflect such redetermination credits, provided that such revisions can physically and mechanically be made prior to the closing date of such processor or publisher and at reasonable expense and provided the processor or publisher has not yet commenced work on that part of the material which the change would affect.

20. No writer shall claim credit for any participation in the screen authorship of any teleplay or story for which the credits are to be determined by the procedure herein provided for prior to the time when such credits have in fact actually been so determined, and no writer shall claim credits contrary to such determination.

21. With reference to credits in advertising which is contracted for by the Company and which is more than

eight column inches in size, if the names of the individual producer or director shall be included, the name of the writer shall be included and in all such instances the writer shall receive parity as to size and style of type with the director and producer except in those instances where the Company shall have determined in good faith that the individual director's or producer's name has box office value. In connection with a series, anthology or episodic, or serial, if advertising credit is given to a producer or a director only in connection with advertising the entire series the writer shall be given credit in such advertising where the number of scripts contributed by such writer shall equal the number of programs produced or directed by the producer or director receiving such advertising credit. If spoken credits are accorded to the producer or director they shall also be accorded to to writer. Oral self identification by a producer or director shall not be deemed to be a spoken credit for the purpose hereof. In the event that the Company licenses or grants to any third party the right to make any of the uses of serial or episodic series material specified in Article 15B 14., it shall use its best efforts, in contracting with such third party, to require such third party to accord to the writer or writers of such material credit therefore which is appropriate to the field or medium for which such material is licensed; provided, however, that Company shall be obligated, in any contract with such third party for hard cover or paperback book publication of such material, to provide for credit to such writer or writers in a manner consistent with credits ordinarily given in the book publishing industry in similar instances. If Company itself uses such material pursuant to paragraphs a. or e. of said Article 15B 14., it will accord appropriate credit to such writer or writers in connection therewith, but in the event of any dispute concerning the appropriateness of such credit the company's decision shall be final. Nothing contained in this subsection 21. shall be deemed to affect, limit or modify the provisions of subsection 8. of Article 15B of this Basic Agreement, it being the intent that a "Buyer" executing an assumption agreement under subsection 8. shall in all respects be in the same position as the "Seller".

22. No commercial or advertising matter, audio, or visual, shall appear on or above the writer's card either as background or otherwise. The following uses of a sponsor's name, mark, slogan, product or package shall not be deemed to involve an appearance of "commercial or advertising matter":

a. Such use as a part of or in direct conjunction with the title of the program or program series, (as in "Dupont Show of the Month", "GE Theatre", "US Steel Hour");

b. Such use as an integral part of draperies, sets, or props appearing under a superimposition of credits where such draperies, sets or props were used in the entertainment portion of the program (as in various types of variety, comedy variety and audience participation programs);

c. The superimposition of a crawl or roller-type credit over a still or moving photograph of a sponsor's product on a set or sets used in the entertainment portion of the program where the use, demonstration, or exhibition of such product was integrated with the entertainment portion of the program;

d. Such use as a part of the playing or singing of the sponsor's musical theme.

Anything in this subsection 22. to the contrary notwithstanding, it is understood and agreed that on any particular program the writer will be given parity of treatment with the director insofar as the appearance of commercial or advertising matter on their respective cards is concerned.

23. A credit on the screen in the form "created by" shall be given on each episode of an episodic series, or serial, to the writer where such writer has separated rights and is entitled to sequel payments for such episode under Article 16B2. Such credit shall be contiguous to a writing credit. The Company may contract to give such credit to any person, but such contract shall provide that in the event another writer is determined to be entitled to such credit, as above provided, that writer shall be given the "created by" credit and the person whose contract provided for such credit may be given a "developed by" credit or other similar credit. If the contract was executed prior to June 16, 1966 providing for such "created by" credit, such credit may be given notwithstanding the above provisions. In the event no one is entitled to such separation of rights or in the case of anthology episodes, nothing herein shall prevent, or require, the giving by the Company a "created by" credit.

a. A writer entited to "created by" credit shall be given appropriate source material credit in hard cover or paperback book publications arising out of the series. The contract with the publisher shall provide that this provision is for the express benefit of the writer and the Guild, but the failure of a publisher to comply with such requirement shall not constitute a breach by the Company.

b. With regard to any episodic series or serial in which a writer subject to this Basic Agreement has separated rights, is entitled to sequel payments under Article 16B2. and receives a "created by" credit, if the Company desires to grant a "developed by credit, such credit may only be given for writing and shall be subject to a Guild arbitration to determine its appropriateness. The Guild's decision in this regard shall be final.

24. A credit entitled "narration written by" or "narration by" shall be in accordance with the following:

NARRATION

(by writer other than writer of teleplay or story and teleplay)

Nature of material already written under WGA when narration writer hired	FILM ASSEMBLED IN STORY SEQUENCE		
	**Credit to Narration Writer	Freelance Minimum	Residuals to Narration Writer
1.	Narration written by	See Rate Schedule A	Yes, based on % of applicable freelance minimum in Rate Schedule A
2. Story only	Narration written by (If story credit, then on same card)	See Rate Schedule A	Yes, based on % of applicable freelance minimum in Rate Schedule A
3. Story and teleplay	None, but if over 8 minutes of narration (aggregate), only receive Narration by credit (same card) Automatic arbitration	See Rate Schedule C	If "Narration by" credit, then only shared residuals, as determined on WGA credit arbitration (aggregate of no more than story & teleplay residuals)

Nature of material already written under WGA when narration writer hired	FILM ASSEMBLED IN STORY SEQUENCE		
	**Credit to Narration Writer	Freelance Minimum	Residuals to Narration Writer
1.	Narration written by	See Rate Schedule A	Yes, based on % of applicable freelance minimum in Rate Schedule A
2. Story only	Narration written by (If story credit, then on same card)	See Rate Schedule A	Yes, based on % of applicable freelance minimum in Rate Schedule A
3. Story and teleplay	None, but if over 8 minutes of narration (aggregate), only receive Narration by credit (same card) Automatic arbitration	See Rate Schedule C	If "Narration by" credit, then only shared residuals, as determined on WGA credit arbitration (aggregate of no more than story & teleplay residuals)

**Credits not to affect rates - There is no separation of Rights for Narration

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25. Notice of tentative credits shall be in the following form, which form has been approved by the Guild:

NOTICE OF TENTATIVE WRITING CREDITS

To: Writers Guild of America, West, Inc., 8955 Beverly Boulevard, Los Angeles, California 90048 and Participating Writers

NAMES OF PARTICIPATING WRITERS ADDRESS

_____ _____

Title of Episode: _____ Production #____
(indicate if pilot)

Series Title: _____

Producing Company: _____

Producer: _____ Assoc. Producer: _____

Director: _____ Story Editor (or Consultant) :____

Other Production Executives, if Participating Writers

_____

Writing credits on this episode are tentatively determined as follows:

ON SCREEN:

Source material credit ON THIS EPISODE (On separate card, unless otherwise indicated) if any:

Continuing source material or Created By Credit APPEARING ON ALL EPISODES OF SERIES (on separate card, unless otherwise indicated) if any:

The above tentative credits will become final unless a protest or request to read the final script is communicated to the undersigned not later than 6:00 P.M. _____.

_____ By:_____

26. Where the Company supplies material to newspapers and periodicals such as TV Guide for listing programs, it will list writing credits if they have theretofore been determined.

27. Where the Company has failed to provide credit on the screen in accordance with final credit determination it shall correct each print before such print is retelecast and place a full-page advertisement in either DAILY VARIETY or the HOLLYWOOD REPORTER specifically crediting the writer. Such remedies shall be in addition to any claim the individual writer may have for damages by reason of such failure to provide proper credit.

28. Each writing credit card required hereunder shall appear on the screen a minimum of two seconds, or the length of the producer's or director's credit, whichever is shown longer.

29. If by reason of method of assignment of the writer or other circumstances in connection with a program or series, the provisions of this Schedule A are inappropriate, either the Guild or the Company may raise the question of such inappropriateness and the mutual agreement reached by them with respect to the credit to be given, if any, shall be binding and conclusive on these parties and the writers.

GC-12

CONSTITUTION AND BY-LAWS

of the

WRITERS GUILD OF AMERICA, WEST, INC.

ARTICLE I

Name and Seal

THE NAME of this corporation shall be the WRITERS GUILD OF AMERICA, WEST, INC. Its seal shall be of a design adopted by its Council. Its principal office shall be in the County of Los Angeles, State of California.

ARTICLE II

Objects

The objects of this Guild are:

Section 1. To promote and protect the professional interests of all creators and adaptors of literary, dramatic or musical material in the radio, television and motion picture industries, as such industries are presently constituted or as they may hereafter be constituted or reconstituted as a result of any technical or scientific developments or discoveries.

Section 2. To represent members of the Guild for the purpose of collective bargaining.

Section 3. To promote fair dealing and to cultivate, establish and maintain cordial relations, unity of action and understanding among all writers, and to resolve and settle disputes among members relating to their respective ownership of or other interests in written material; and to promote and cultivate fair dealings, cordial relations and understanding between this Guild, its members and other professional writers on the one hand, and organiza-

tions, groups or individuals with whom they have mutual aims or interests, or with whom they work or have business or professional dealings, on the other hand.

Section 4. To adjust, arbitrate and resolve disputes relating to the work of members, their ownership of or other interests in written material and any other matters relating directly or indirectly to the professional interests of members.

Section 5. To correct abuses to which members may be subjected; to assist members in securing equitable contracts, satisfactory working conditions and fair return in all dealings with employers and others with whom they have professional relations; and to establish and enforce standard minimum contracts and Codes of Fair Practice.

Section 6. To stimulate an interest in and demand for, and to actively participate in, efforts to obtain adequate copyright legislation, both domestic and foreign, and to promote better copyright relations between the United States and other countries.

Section 7. To cooperate and/or to enter into affiliation agreements where necessary with other groups or organizations having objectives or interests in common with the Guild.

Section 8. To protect the rights and property of the Guild and its members both at law and under the provisions of this Constitution and by-Laws; and to do any and all things necessary, desirable or proper to promote the welfare and interests of the Guild, its members and all professional writers, and to carry into effect or to further any of the foregoing purposes.

ARTICLE III

Government and Administration of the Guild

This Guild shall consist of two Administrative Branches denominated as the Screen Writers Branch, and the Television-Radio Writers Branch, and such other and further Branches as may be established pursuant to the provi-

sions of this Constitution and By-Laws expressly relating thereto.

The Guild and its Administrative Branches shall be governed in accordance with the provisions of this Article III.

A. THE GUILD

Section 1. Effective on and after the Guild elections to be held for the 1959-1960 term, the governing body of this Guild shall be known as the Council and shall consist of a President, First Vice-President, Second Vice-President, Secretary, Treasurer and 18 members. The President of the Screen Writers Branch shall be the First Vice-President of the Guild. The President of the Television-Radio Writers Branch shall be the Second Vice-President of the Guild. The Vice-President of the Television-Radio Writers Branch shall be the Secretary of the Guild. The Vice-President of the Screen Writers Branch shall be the Treasurer of the Guild.

Section 2. The Council of the Guild shall have exclusive power and authority unless otherwise indicated elsewhere in this Constitution and By-Laws, with respect to the following matters:

(a) The employment and discharge of all employees, agents and professional representatives of the Guild and its Administrative Branches, subject to the provisions of Section 3 hereof.

(b) The exercise of all rights and authority of the Guild and the Council as such rights or authority shall be granted or specified in any and all Articles of this Constitution and By-Laws.

(c) The appointment of both standing and ad hoc committees to consider, take action or report to the Council as the case may be, in accordance with and to the extent of the authority delegated by the Council.

(d) The determination and implementation of Guild policy with respect to Federal, State and local legislation in the fields of copyright, labor and taxation.

(e) The organiaztion of additional groups of writers not presently within the jurisdiction of the Guild and the invitation to existing organizations of writers not a part of this Guild or of the Writers Guild of America, East, Inc., to become affiliates or additional member branches of this Guild.

(f) The establishment and maintenance of affiliations and the entering into of agreements with other groups of writers either within or without the United States; provided, however, that the Council shall have no power to enter into an affiliation agreement which abrogates, modifies or reduces any right or privilege given to or reserved by any of the Administrative Branches in this Constitution and By-Laws.

(g) The establishment and maintenance of uniform terms and conditions under which Guild members may be represented by agents in connection with the rendition of their services or the sale or licensing of their literary or dramatic material.

(h) The establishment and maintenance of public relations policies of the Guild and its branches.

(i) The establishment and maintenance of such facilities as may be operated for the benefit of all members such as but not limited to a group insurance plan, a federal credit union, manuscript registration and the preparation and circulation of market lists.

(j) The handling of those matters not specified herein but as to which the Council has been given either special or general power and authority by a resolution of the Executive Boards of all of the Administrative Branches pursuant to Section 2 of the subdivision B of this Article.

(k) The ownership and control of the funds and property of the Guild.

(l) The settlement of all disputes among or between Administrative Branches of the Guild.

(m) To delegate one or more of its administrative powers to any of the Administrative Branches provided such delegation is authorized by an affirmative vote of not less than 2/3rds of the total membership of the Council.

(n) The construction and interpretation of the provisions of this Constitution and By-Laws.

Section 3. Appointment and Duties of Executive Director and Counsel.

(a) The Council shall select an Executive Director and an attorney or firm of attorneys who shall act as counsel both to the Guild and to its Administrative Branches.

The appointment of an Executive Director or attorney shall be submitted to the general membership of the Guild for approval at the first annual or special membership meeting following such appointment.

(b) The Executive Director shall be responsible for and shall have all the authority necessary to carry on the daily administration of the Guild business, which authority shall include but shall not be limited to the authority to employ and discharge, the direction and control of personnel and the supervision and correlation of the work of committees and other intra-Guild activities.

(c) The personnel of the Guild shall include one or more persons designated as Administrators whose function it shall be to administer under the general control and direction of the Executive Director particular Guild minimum basic agreements. The Executive Director's authority to employ and discharge any such Administrators shall be subject to the right on the part of the Board of the particular Branch involved to approve any person so engaged as an Administrator, which approval, however, shall not be unreasonably withheld, and to request the dismissal of any such person for cause. The Executive Director may, subject to the approval of the Council, designate one of such Administrators as the Assistant Executive Director.

B. THE ADMINISTRATIVE BRANCHES

Section 1. The governing body of each Administrative Branch of this Guild shall be its Executive Board, which shall consist of the eleven persons who are the Branch representatives on the Council, three of whom shall be designated and elected as the President, Vice-President and Secretary-Treasurer of the Branch.

Section 2. The Executive Board of each Administrative Branch shall have the exclusive authority to exercise, perform and enforce all of the rights, duties and obligations accorded to it by the terms and provisions of this Constitution and By-Laws, except to the extent that such authority has been limited by the reservation of a right of action on the part of the membership or the delegation of specific authority to the Council pursuant to any terms or provisions elsewhere herein contained.

Each Executive Board shall have the power to delegate to the Council such of its authority as it may from time to time deem necessary provided such delegation is made by joint resolution of the Executive Boards of all of the Branches.

Section 3. Areas of Administrative Authority.

A. For the purposes of servicing writers and administering minimum basic agreements, Codes of Fair Practices and other standard contracts, the Administrative Branches shall exercise exclusive authority over the following respective areas of writing activity:

(a) Screen Writers Branch—the employment of writers for the preparation of literary or dramatic material, or the acquisition of literary or dramatic material, previously unpublished and unproduced in any other media, and rights and licenses with respect thereto for use in the production of motion pictures produced for theatrical release, or for "paid" television if also released theatrically, whether such motion pictures be filmed, taped or otherwise mechanically or electrically recorded excluding however subsidiary motion picture reproduction of live broadcasts.

(b) Television-Radio Writers Branch—the employment of writers for the preparation of literary or dramatic material, or the acquisition of literary or dramatic material previously unpublished and unproduced in any other media, and rights and licenses with respect thereto, for use in the production whether live or otherwise of television or radio programs, except as hereafter otherwise provided in paragraph B below.

B. The employment of writers for the preparation of literary or dramatic material, or the acquisition of literary material, previously unpublished and unproduced in any other media, and rights and licenses with respect thereto, for use in the production of motion pictures, whether such motion pictures be filmed, taped or otherwise mechanically or electrically recorded, produced solely for release through "paid" television shall be within the administrative authority of the Council which shall determine which Administrative Branch or Branches, if any, shall be given the authority to service the writers and administer collective bargaining agreements or Codes of Fair Practice applicable to that field of writing.

"Paid television" for the purposes of this section shall be defined as the transmission or broadcasting of television programs with respect to the reception of which a fee or charge has been or is intended to be made.

C. If a dispute shall arise between the Administrative Branches concerning the extent of their respective areas of administrative authority the matter shall be referred to the Council for settlement.

D. If a dispute shall arise between a branch of the Guild and a branch of the Writers Guild of America, East, Inc. concerning their respective areas of administrative authority, the dispute shall be submitted to both Councils in the manner provided in Section 9 of Article XIV hereof.

ARTICLE IV

Membership

There shall be four classes of membership in this Guild and in the Administrative Branches thereof, which classes shall be denominated Associate, Current, Guild Member and Withdrawn. Upon application to and acceptance in the Guild, a person shall become a Guild member, and shall be entitled to be an Associate Member, or a Current Member, in accordance with the provisions of Sections 1 and 2 of this Article. Upon obtaining the requisite units of credits or employment, as provided in Section 2 of

this Article, such person shall be eligible for Current status in the Guild or its Administrative Branches. In the event that such person shall fail to maintain his Current status in the Guild or any Administrative Branch, as provided in Section 3 of this Article, he shall nevertheless continue his status as a Guild Member, subject only to the provision of Section 4(2) of this Article.

Section 1. Eligibility for Associate Membership.

Any person engaged to write literary or dramatic material for, and any author of unpublished and unproduced literary or dramatic material as to which rights are sold or licensed or granted for use in a theatrical motion picture, a radio program or a television program, whether live, filmed or taped, as said terms are commonly understood in the entertainment industry, shall be eligible for Associate membership in this Guild and its Administrative Branches.

Section 2. Eligibility for Current Status.

A. Eligibility for Current Status in the Guild.

(1) Any person who shall meet the qualifications for Current Status in any of the Administrative Branches of this Guild as provided for in subparagraph B hereof shall be eligible for Current Status in the Guild.

(2) Any person not meeting the qualifications prescribed in subdivision (1) above shall be eligible for Current Status in this Guild if he shall obtain eighteen units of credit computed in accordance with the following provisions within a period of two years preceding the date of application for Current Status in the Guild.

(a) With reference to material as to which the writer receives credit, the number of units shall be computed in accordance with the following schedule:

Writing Credit	Unit Credit
1 feature motion picture screenplay	18 units
1 feature motion picture story	9 units
1 motion picture short subject screenplay	6 units
1 motion picture short subject story	3 units
1 story and teleplay or teleplay for a television program (live or film) 90 minutes in length	12 units
1 story and teleplay for a television program (live or film) one hour in length	6 units

Writing Credit	Unit Credit
1 story and teleplay for a "one time" or "unit series" or "episodic series" television program (live or film) one half-hour in length	3 units
1 story and teleplay or teleplay for "one time" or "unit series" or "episodic series" television program (live or film) one quarter-hour in length	2 units
1 teleplay for a television program (live or film) one hour in length	4 units
1 teleplay for a "one time" or "unit series" or "episodic series" or "serial" television program (live or film) one half-hour in length	2 units
1 teleplay for a "serial" television program (live or film) one quarter-hour in length	1 unit
1 unpublished and unproduced story sold or licensed or written under employment for a television program (live or film) 90 minutes in length	6 units
1 episode of an episodic series or serial on which the writer receives a "Created By" credit pursuant to the provisions of the applicable collective bargaining agreement	1 unit
1 unpublished and unproduced story sold or licensed, or written under employment for a television program (live or film) one hour in length	2 units
1 unpublished and unproduced story or licensed, or written under employment for a television program (live or film) one half-hour in length	1 unit
1 story and radio play or radio play for a radio program 90 minutes in length	12 units
1 story and radio play for a radio program one hour in length	6 units
1 story and radio play for a "one time" or "unit series" or "episodic series" radio program one half-hour in length	3 units
1 story and radio play or radio play for "one time" or "unit series" or "episodic series" radio program one quarter-hour in length	2 units
1 radio play for a radio program one hour in length	4 units
1 radio play for a "one time" or "unit series" or "episodic series" or "serial" radio program one half-hour in length	2 units
1 radio play for a "serial" radio program one quarter-hour in length	1 unit
1 unpublished and unproduced story sold or licensed, or written under employment for a radio program 90 minutes in length	6 units

Writing Credit	Unit Credit
1 unpublished and unproduced story sold or licensed, or written under employment for a radio program one hour in length	2 units
1 unpublished and unproduced story sold or licensed, or written under employment for a radio program one half-hour in length	1 unit
1 unpublished and unproduced story sold or licensed, or written under employment for a radio program one quarter-hour in length	1 unit
Employment to revise, rewrite or polish literary property in any form suitable for motion pictures, television or radio, and of any length (if such property is thereafter produced, the writer shall be entitled to the number of units provided for hereinabove in this Schedule for a produced property of the type involved, less the one unit theretofore credited to the writer of this provision).	1 unit

Unit credit for the writing or sale or licensing of material for "paid television" shall be determined by the Council. Unit credit for programs whose running time is longer or shorter than the times hereinbefore specified shall be that proportion of the unit credit above specified which the actual length of the program in question bears to the program lengths herein specified for the type of program involved. In unusual cases the Council shall have the authority to make specific unit credit determination applicable to any such program.

The words "story" and the words "teleplay" or "radioplay" shall be deemed to include all literary material written for radio or television programs provided however that:

(i) In order for literary material which is not in the form of a complete dramatic story, teleplay or radio play to be entitled to the unit credits hereinabove referred to, the use of such literary material must absorb not less than 50 per cent of the running time of the program involved.

(ii) If the use of such material shall absorb less than 50 percent but more than 25 per cent of the program running time then the unit credit to be given in connection with such material shall be 50 per cent of the credit

above provided with respect to the type of program for which the material is written.

(iii) If the use of such material shall absorb less than 25 per cent of the program running time then the unit credits to be given in connection with such material shall be 25 per cent of the unit credit above provided with respect to the type of material for which the program is written.

(b) With reference to material which a writer shall prepare, revise, rewrite or polish, but with respect to which he shall not receive credit whether such writing shall have been on a weekly, staff or free lance basis, such writer shall, on submission of proof and subject to the provisions of subdivisions (c) below, receive one half-unit of credit for each week or major fraction thereof devoted to such writing, but not exceeding in any event the number of units such writer would have been credited with in accordance with the Schedule set forth in subdivision (a) preceding if he had received credit with respect thereto; and provided further that if the number of weeks worked shall not be susceptible of exact computation, the writer shall, on submission of proof and subject to the provisions of subdivision (c) below, be entitled to receive up to a maximum of half the number of units applicable to the type of material provided by him in accordance with the Schedule of units set forth in subdivision (a) hereof.

(c) If two writers shall receive credit with respect to any material which is the basis for computation of unit credits pursuant to the provisions of subdivision (a) above, then each writer shall be credited with the number of units with which a single writer would have been credited with respect thereto, and if more than two writers shall prepare any such material then each such writer shall be credited with the number of units derived by dividing the total number of such writers into twice the number of units with which a single writer would have been credited with respect thereto.

(d) Notwithstanding any of the foregoing, if the writer shall write material which shall be produced as a pilot episode for a television series, he shall receive twice the

number of units of credit applicable to similar material written for a television program of equal length. Further, if the writer shall be employed to write, and in fact writes material (or sells or licenses such material) as a pilot episode for a television series, but such material is not produced, then such writer shall receive the same number of units of credit as if his material were produced as a television program (other than a pilot) of equal length.

B. Eligibility for Current Status in the Administrative Branches of this Guild.

1. Current Status in the Screen Writers Branch. Any writer shall be eligible for Current Status in the Screen Writers Branch who during the two-year period immediately preceding the date of his application for Current Status in such Branch shall have either:

(a) Received, with respect to motion pictures as to which the Screen Writers Branch has administrative authority as provided in Article 111 hereof produced in the United States or produced outside of the United States by a company which is within the jurisdiction of the Guild either (i) a single screen credit for writing a screenplay for a motion picture, (ii) two screen credits for unpublished stories for two feature length motion pictures, or (iii) screen credits for writing the screenplays for three short subjects or the unpublished stories for six short subjects.

(b) Been employed in the United States during such time as a writer for theatrical motion pictures for a period or aggregate of periods of eighteen weeks; or

(c) Prepared material as a writer of motion pictures for the United States Government or any branch or subdivision thereof or in the industrial or educational film fields in the United States, which in the opinion of the Executive Board of the Screen Writers Branch established such writer's qualifications as being equivalent to the qualifications specified in subdivisions (a) or (b) above.

(d) Prepared product material entitling him to eighteen units of credit for screen writing computed in accordance with the Schedule set forth in Section 2A (2) (a) above and subject to each of the limitations hereof.

2. Current Status in the Television-Radio Writers Branch. Any writer shall be eligible for Current Status in the Television-Radio Writers Branch who, during the two-year period immediately preceding the date of his application for Current Status in such Branch, shall have either:

(a) Been employed during such time in the United States as a writer on staff or week-to-week or term basis for radio or television programs over which the Television-Radio Writers Branch has administrative authority pursuant to the provisions of Article 111 hereof for a period or aggregate of periods of eighteen weeks, or

(b) Prepared produced material entitling him to eighteen units of credit for televisions or radio writing or a combination of the two computed in accordance with the Schedule as set forth in Section 2A (2) (a) above and subject to each of the limitations thereof.

If two writers shall receive credit with respect to any material which is the basis for computing their eligibility for Current Status in the Television-Radio Writers Branch, which computation is made pursuant to the provisions of Section 2.A(2)(a) above, then each writer shall be entited to credit for the same amount of material as provided for in said Section to which a single writer would have been entitled with respect thereto, and if more than two writers shall receive credit with respect to any such material, then each such writer shall be entitled to credit for material as provided in said Section, which shall be determined by dividing the total number of such writers into twice the amount of material credit to which a single writer would have been entitled.

The "programs" referred to shall be limited to those produced in the United States or, if outside the United States, by a company which is within the jurisdiction of the Guild and also, in the case of a television program, to those over which the Television-Radio Writers Branch has administrative authority as provided for in Article 111 hereof.

3. A writer shall be eligible for Current Status in each Administrative Branch of this Guild with respect to which

he shall satisfy the requirements of Section 2.B of this Article relating to Active Membership therein.

The words "story" and the words "teleplay" or "radioplay" shall be deemed to incude all literary material written for radio or television programs provided, however, that:

(i) In order for literary material which is not in the form of a complete dramatic story, teleplay or radioplay to be entitled to the unit credits hereinabove referred to, the use of such literary material must absorb not less than 50 percent of the running time of the program involved.

(ii) If the use of such material shall absorb less than 50 percent but more than 25 percent of the program running time then the unit credit to be given in connection with such material shall be 50 percent of the unit credit above provided with respect to the type of program for which the material is written.

(iii) If the use of such material shall absorb less than 25 percent of the program running time then the unit credit to be given in connection with such material shall be 25 percent of the unit credit above provided with respect to the type of material for which the program is written.

• • • •

• • • application for Withdrawn status. No member on Withdrawn status shall engage in any work within the jurisdiction of this Guild until he shall have been restored to Associate or Current status in the Guild as the facts may warrant.

4. Reinstatement to Current Status—Any Guild Member shall be reinstated in Current status both in the Guild and the appropriate Administrative branches thereof upon complying with one-half the minimum requirements hereinbefore specified for eligibility for such Current membership.

Section 6. **Voting and Other Rights of Members of the Guild and of the Administrative Branches.**

Except as otherwise provided for in this Constitution and By-Laws, members of this Guild shall have only such rights as are specifically provided for in this Section.

1. Associate Member—Associate members of the Guild and of the Administrative Branches thereof, shall have all the rights of Current members of the Guild and of Current members of the Administrative Branch of which they are Associate members, except the right to vote, the right to hold office and the right to membership on Guild or Branch committees: provided, further, that their right to receive all of the other benefits of Guild and Branch membership may be restricted or modified by an reasonable limitations imposed by circumstances or conditions beyond the control of the Guild, such as by way of example, but not limitation, any restrictions imposed in connection with a Federal Credit Union.

2. Current Members of the Guild—Current members of this Guild shall have the right to attend all membership meetings of the Guild, to vote on all matters presented thereat or to the Guild membership for vote by mail, to elect Guild officers, to receive Guild communications and to participate in all Guild activities including the holding of Guild office, and the appointment to membership on Guild committees, and to receive all of the benefits of Guild membership.

3. Current Members of the Administrative Branches—Current members of any Administrative Branch shall have the right to attend all membership meetings of such Branch and to vote on all matters presented thereat or to the membership of such Branch for a mail vote; to elect the members of the Council representing such Branch and thereby to designate the officers and members of the Board of such Branch, to be elected to the Council and to the Board of the Branch and to be appointed to Branch committees and otherwise to participate in all of the activities of the Branch.

4. Guild Members who have lost Current status—members of the Guild and of the Administrative Branches,

who have attained and subsequently lost Current status, shall have all of the rights of the Current members of the Guild and of Current members of the Administrative Branch of which they are members, except the right to vote, the right to hold office, and the right to membership on Guild or Branch committees, unless the Council of the Guild shall authorize such individual to serve on any specified committee of the Guild or its Administrative Branches; provided, however, that the right of such individuals to receive all of the other benefits of Guild and Branch membership may be restricted or modified by circumstances or conditions beyond the control of the Guild, such as by way of example, but not limitation, any restrictions imposed in connection with a Federal Credit Union.

5. Withdrawn Members—Members on Withdrawn status shall not be entitled to attend meetings, to vote, to sit on committees or be elected to office or to receive Guild communications but such members may enjoy such other benefits of membership which the Council may from time to time make available to them.

6. Members Suspended or Declared in Bad Standing—Any member suspended or declared to be in bad standing in accordance with the terms and provisions of this Constitution and By-Laws shall during such period of suspension or bad standing, be deprived of all the rights and privileges of membership, except that any such member shall not be deprived of any right to which such member would otherwise be entitled as against a producer or agent, by reason of any contract between the Guild and such producer or agent, or by reason of any minimum terms or standards maintained by the Guild affecting any such producer or agent, and further provided that the foregoing shall in no way preclude or inhibit the Guild from invoking any Guild Shop provision contained in any agreement it may have with any producer insofar as such Guild Shop provision may be applicable to any member in bad standing.

7. Any person whose membership in this Guild shall cease for any reason whatsoever shall have no right or interest in, or with respect to the property or funds of this Guild or of any Branch thereof.

Section 7. Resignation.

Only members who are in good standing and are not indebted to this Guild may tender their resignation from the Guild.

No member's resignation shall be effective unless the tender of resignation is in writing signed by the member and is accepted by the Council. The Council may, on tender of resignation, refuse to accept it and require the member either to continue his membership for a designated period not to exceed two years or to be expelled in bad standing. If, on the latter decision being made by the Council, the member chooses to remain in the Guild, his rights and privileges shall not be impaired by his tender of resignation.

Section 8. Membership Committee.

There shall be a combined Membership and Finance Committee, whose composition and tenure shall be as provided for in Section 4(c) of Subdivision B of Article VIII hereof. The Executive Director shall have the right to attend the meetings of such combined committee provided, however, that his presence shall not be a prerequisite to the holding of any meeting of the Committee.

GC-15A

June 12, 1975

CERTIFIED MAIL #70304
RETURN RECEIPT REQUESTED

Mr. Hugh Benson
10433 Wilshire Boulevard—Apt. 204
Los Angeles, California 90024

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Benson:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

JOHN A. MENDONSA
Resident Counsel

JAM/blb

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

HUGH BENSON

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 29th day of June, 1973, at 2:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) Having crossed the Guild's picket lines at Metro-Goldwyn-Mayer, Inc. on or about April 4, 1973, without having informed the Guild in advance of the nature of your business with Metro-Goldwyn-Mayer, Inc.; and (2) having, during the month of April 1973, and more specifically, on or about April 4, 1973, rendered services for Metro-Goldwyn-Mayer, Inc., against whom the Guild was at such time on strike.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have

the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

June 12, 1973

GC-15B

April 9, 1973

CERTIFIED MAIL #70507
RETURN RECEIPT REQUESTED

Mr. Jerome Bredouw
2100 Beachwood Drive #306
Holly[illegible]d, California 90063

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Bredouw:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,
JOHN A. MENDONSA

Resident Counsel

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

JEROME BREDOUW

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Sections 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 10th day of May, 1973, at 5:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of Sections 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which read as follows:

> *Section 12*: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
>
> *Section 13*: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

Specifically, you are charged with having crossed a Guild picket line at Universal City Studios, Inc. on or about March 16, 1973 and thereafter, for the purpose of rendering services for Universal City Studios, Inc., which company was at that time on the Guild's Strike List.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your behalf and to cross-examine any witnesses who shall testify in support of the charges.

JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

GC-15D

July 27, 1973

CERTIFIED MAIL # 70541
RETURN RECEIPT REQUESTED

Mr. Robert Cinader
8937 Wonderland Park Ave.
Los Angeles, CA 90046

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Cinader:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

JOHN A. MENDONSA
Resident Counsel

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

ROBERT CINADER

NOTICE OF DISCIPLINARY HEARING AND CHARGES

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on charges made herein will take place on the 15th day of August, 1973, at 2:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Orders and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973 as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Universal City Studios, Inc. during the month of June 1973, without having informed the Guild in advance of the nature of your business with said company; and (2) having during the month of June 1973, rendered services for Universal City Studios, Inc., a company against whom the Guild was at such time on strike.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also

have the right to introduce evidence, present witnesses on your own behalf and cross-examine any witnesses who shall testify in support of the charges.

JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

July 27, 1973

GC-15G

June 19, 1973

CERTIFIED MAIL #70306
RETURN RECEIPT REQUESTED

Mr. David Levinson
4200 Hayvenhurst Drive
Encino, California 91316

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Levinson:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

JOHN A. MENDONSA
Resident Counsel

JAM/blb

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

DAVID LEVINSON

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 6th day of July, 1973, at 10:00 A.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Universal City Studios, Inc., during the month of April 1973, more particularly on or about April 16 and April 30, 1973, without having informed the Guild in advance of the nature of your business with Universal City Studios, Inc.; having, during the months of April and May 1973, rendered services for Universal City Studios, Inc., against whom the Guild was at such time on strike.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses

on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

June 19, 1973

GC-15I

April 9, 1973

CERTIFIED MAIL #70493
RETURN RECEIPT REQUESTED

Mr. Albert S. Ruddy
615 North Dohsny Drive
Beverly Hills, California 90210

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Ruddy:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

JOHN A. MENDONSA
Resident Counsel

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

ALBERT S. RUDDY

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Sections 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 3rd day of May, 1973, at 3:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of Section 12 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which reads as follows:

> All members are prohibited from crossing a picket line which is established by the Guild at any entrances to the premises of a struck producer.

Specifically, you are charged with having crossed a Guild picket line at Paramount Pictures Corporation on or about March 14 and March 15, 1973.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

GC-15J

April 10, 1973

CERTIFIED MAIL #70509
RETURN RECEIPT REQUESTED

Mr. Coles Trapnell
10577 Rochester Avenue
Los Angeles, California 90024

Re: NOTICE OF DISCIPLINARY HEARINGS AND CHARGES

Dear Mr. Trapnell:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,
JOHN A. MENDONSA
Resident Counsel

In the Matter of
WRITERS GUILD OF AMERICA, WEST, INC.

vs.

COLES TRAPNELL

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Sections 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 15th day of May, 1973, at 4:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of sections 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which read as follows:

> *Section 12*: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
> *Section 13*: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

Specifically, you are charged with having crossed a Guild picket line at Universal City Studios, Inc. on or about

March 12 and April 2, 1973, for the purpose of rendering services for Universal City Studios, Inc., which company was at these times on the Guild's Strike List.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

GC-15K

WRITERS GUILD OF AMERICA, WEST, INC.
[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD

LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601

Cable: INTWRITER, LOS ANGELES

October 23, 1973

CERTIFIED MAIL #70809
RETURN RECEIPT REQUESTED

Mr. Herbert J. Wright
2068 Watsonia Terrace
Hollywood, California 90028

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Wright:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/blb
Enc.

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

HERBERT J. WRIGHT

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 4th day of December, 1973, at 1:30 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Sections 1, 12, and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Universal City Studios, during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; (2) having, during the months of March, April, May and June 1973, rendered services for Universal City Studios, a company against whom the Guild was at such times on strike.

You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a Current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on

your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

October 23, 1973

GC-15L

October 23, 1975

CERTIFIED MAIL #70810
RETURN RECEIPT REQUESTED

Mr. Stephen Heilpern
10945 Bluffside Drive—#136
Studio City, California 91604

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Heilpern:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

JOHN A. MENDONSA
Resident Counsel

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

STEPHEN HEILPERN

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 4th day of December, 1973, at 3:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Sections 1, 12, 13 and 28 of the Rules for the Conduct of Members During a Strike dated February 20, 1973, as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Universal City Studios, during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; (2) having during the months of March, April, May and June 1973, rendered services for Universal City Studios, a company against whom the Guild was at such times on strike; and (3) refusing to perform picket duties during the strike after having been requested to do so by representatives of the Guild.

You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a Current member in good standing of the Guild. You also

have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

October 23, 1973

GC-15M

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD

LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601

Cable: INTWRITER, LOS ANGELES

October 18, 1973

CERTIFIED MAIL #70477
RETURN RECEIPT REQUESTED

Mr. James McAdams
4953 Bilmoor Avenue
Tarzana, California 91356

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. McAdams:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/blb
Enc.

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

JAMES MCADAMS

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 20th day of November, 1973, at 3:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violations of the Guild's Strike Orders, and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Universal City Studios during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; (2) having, during the months of March, April, May and June 1973, rendered services for Universal City Studios, a company against whom the Guild was at such times on strike.

You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a Current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

October 18, 1973

GC-15N

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601

Cable: INTWRITER, LOS ANGELES

October 17, 1973

CERTIFIED MAIL #70475
RETURN RECEIPT REQUESTED

Mr. Martin Ransohoff
9401 Wilshire Boulevard—1180
Beverly Hills, California 90212

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Ransohoff:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/blb
Enc.

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

MARTIN RANSOHOFF

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 19th day of November, 1973, at 2:30 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Paramount Pictures, Inc. during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; and (2) having, during the months of March, April May and June 1973, rendered services for Paramount Pictures, Inc., a company against whom the Guild was at such times on strike.

You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a Cur-

rent member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

October 17, 1973

GC-150

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601

Cable: INTWRITER, LOS ANGELES

October 17, 1973

CERTIFIED MAIL #70795
RETURN RECEIPT REQUESTED

Mr. Andrew J. Fenady
126 North Rossmore Avenue
Los Angeles, California 90004

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Fenady:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/blb
Enc.

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

ANDREW J. FENADY

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 15th day of November, 1973, at 2:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Orders and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Paramount Pictures, Inc. during the months of March, April, May and June 1973, without having obtained a Guild pass to enter said premises; and (2) having, during the months of March, April, May and June 1973, rendered services for Bing Crosby Productions, Inc., a company against whom the Guild was at such times on strike.

You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a Current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your

own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

October 17, 1973

GC-15Q

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD

LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601

Cable: INTWRITER, LOS ANGELES

October 17, 1973

CERTIFIED MAIL #70474
RETURN RECEIPT REQUESTED

Mr. Thomas L. Miller
2160 Century Park East
Los Angeles, California 90067

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Miller:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/blb
Enc.

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

THOMAS L. MILLER

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director, the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 19th day of November, 1973, at 1:00 P.M. at the offices of the Writers Guild of America, west, Inc. located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which are attached hereto.

Specifically you are charged with: (1) having crossed the Guild's picket lines at Paramount Pictures, Inc. during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; and (2) having, during the months of March, April, May and June 1973, rendered services for Paramount Pictures, Inc., a company against whom the Guild was at such times on strike.

You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a Current member in good standing of the Guild. You also

have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

October 17, 1973

GC-15R

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

CY CHERMAK,

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Aricle X, Sections 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 2nd day of May, 1973, at 2:00 p.m. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Section(s) 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which read as follows:

Section 1: Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.
Section 12: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
Section 13: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a com-

pleted picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

Specifically, you are charged with having crossed the Guild's picket lines at Universal City Studios, Inc. during the month of April, 1973, for the purpose of rendering services for a company against whom the Guild was at such time on strike.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good ctanding of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

GC-15S

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD

LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601

Cable: INTWRITER, LOS ANGELES

April 9, 1973

CERTIFIED MAIL #70495
RETURN RECEIPT REQUESTED

Mr. Frank Paris
P.O. Box 2118 Toluca Lake
North Hollywood, California 91602

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES:

Dear Mr. Paris:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/blb
Enc.

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

FRANK PARIS

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Sections 1, 5 and 6 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. a hearing on the charges made herein will take place on the 1st day of May, 1973, at 4:00 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of Sections 12, 13 and 28 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, which read as follows:

Section 12: All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
Section 13: Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment, regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

Section 28: The Guild shall have authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any member found guilty of refusal to perform picket duty shall be fined not less than $100 per day for each day of such refusal to perform.

Specifically, you are charged with having crossed a Guild picket line at Walt Disney Productions on or about March 6, 1973, for the purpose of rendering services for Walt Disney Productions which company was at that time on the Guild's Strike List.

You are further charged with having refused on or about February 22, 1973, to accept an assignment to picket.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

GC-15U

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD

LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601

Cable: INTWRITER, LOS ANGELES

November 8, 1973

CERTIFIED MAIL #70829
RETURN RECEIPT REQUESTED

Mr. Jack Haley, Jr.
1443 Devlin Drive
Los Angeles, California 90069

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES:

Dear Mr. Haley:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/blb
Enc.

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

JACK HALEY, JR.

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 18th day of December, 1973, at 2:30 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Metro-Goldwyn-Mayer Studios during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; (2) having during the months of March, April, May and June 1973, rendered services for Metro-Goldwyn-Mayer, Inc., a company against whom the Guild was at such times on strike.

You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a Current member in good standing of the Guild. You also have the right to introduce evidence, present witnesses

on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

November 8, 1973

GC-17E

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

DAVID LEVINSON

The Trial Committee of the Writers Guild of America, west, Inc. (herein called the Guild) convened on Monday, July 16, 1973, at 10:15 A.M. at the offices of the Guild in Los Angeles, California to hear testimony and to receive evidence in the above entitled matter. Said proceedings were duly called pursuant to the provisions of Article X of the Constitution and By-Laws of the Writers Guild of America, west, Inc. effective January 18, 1973.

This matter was heard before the following members of the Trial Committee:

Emmet Lavery, Chairman
Curtis Kenyon
Arnold Peyser
George Seaton
Robert White

Milton Orman, Esq., represented the Guild on behalf of its Executive Director, Michael H. Franklin.

David Levinson was notified by Certified Mail on June 19, 1973, of the charges, time, date and place of the hearing. He was advised that he had the right to be present at the hearing and/or to be represented by counsel or a Current member of the Guild.

Mr. Levinson did not attend the hearing. He was represented by counsel, Robert A. Holtzman of the law firm of Loeb & Loeb, and Allen E. Susman of the law firm of Rosenfeld, Meyer & Susman.

This matter came before the Trial Committee pursuant to charges filed by the Guild's Board of Directors in accordance with Article X.B.1 of the Guild's Constitution and By-Laws. Said charges alleged that Mr. Levinson violated the Guild's Strike Orders and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973.

Specifically, Mr. Levinson was charged with: (1) Having crossed the Guild's picket lines at Universal City Studios, Inc. during the month of April 1973, and more particularly on or about April 16 and April 30, 1973, without having informed the Guild in advance of the nature of his business with Universal City Studios, Inc.; and (2) having during the months of April and May, 1973, rendered services for Universal City Studios, Inc. against whom the Guild was at such time on strike.

FINDING OF THE TRIAL COMMITTEE AND DECISION AND ORDER OF THE BOARD OF DIRECTORS

Pursuant to Article X, Section 7 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Trial Committee submitted, in writing, its findings, conclusions and recommendations to the Board of Directors. The Board of Directors has reviewed and considered the findings, conclusions and recommendations of the Trial Committee and hereby adopts said findings, to wit:

1. Mr. Levinson, a member of the Guild, had been given full and timely notice both of the Rules for the Conduct of Members During a Strike and of the fact that the Guild was on strike against Universal City Studios, Inc., at the time of the alleged violations.
2. Mr. Levinson, nevertheless, crossed the Guild's picket lines at Universal City Studios, Inc. on April 16 and April 30, 1973 and did at that time render services to said company against whom the Guild was at such time on strike.
3. Mr. Levinson by such acts and conduct did violate the Guild's Strike Order and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike as alleged.

IT IS HEREBY ORDERED by the Board of Directors that David Levinson be suspended from membership in the Guild for a period of two (2) years commencing immediately and that he be fined the sum of $10,000.00 plus an amount equal to the costs of the hearing, said sums to be paid to the Guild no later than September 6, 1973.

Dated at Los Angeles, California this 31st day of August, 1973.

For the Board of Directors of the
WRITERS GUILD OF AMERICA, WEST, INC.

By /s/ John Furia, Jr.
JOHN FURIA, JR., President of the
WRITERS GUILD OF AMERICA, WEST, INC.

GC-17H

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

DAVID VICTOR

The Trial Committee of the Writers Guild of Ameriac, west, Inc. (herein called the Guild) convened on Tuesday, May 21, 1973 at 3:00 p.m. at the offices of the Guild in Los Angeles, California to hear testimony and to receive evidence in the above entitled matter. Said proceedings were duly called pursuant to the provisions of Article X of the Constitution and By-Laws of the Writers Guild of America, west, Inc., effective January 18, 1973.

This matter was heard before the following members of the Trial Committee:

Christopher Knopf, Chairman
Michael Blankfort
Emmet Lavery
Nate Monaster
James Poe

John A. Mendonsa, the Guild's Resident Counsel, represented the Guild on behalf of its Executive Director.

David Victor was notified by Certified Mail on April 14, 1973, of the charges, time, date and place of the hearing. He was advised that he had a right to be present at the hearing and/or to be represented by counsel or a Current member of the Guild.

Mr. Victor did not attend the hearing. He was represented by counsel, Albert F. Smith, Robert A. Holtzman, David G. Miller and Saul N. Rittenberg of the law firm of Loeb and Loeb, and Albert E. Sussman of the law firm of Rosenfeld, Meyer and Sussman.

This matter came before the Trial Committee pursuant to charges filed by the Guild's Board of Directors in

accordance with Article X.B.1 of the Guild's Constitution and By-Laws. Said charges allege that Mr. Victor was in violation of the Guild's Strike Order and Rules No. 1, 12 and 13 of the Rules For The Conduct of a Member During a Strike, dated February 20, 1973.

Specifically, Mr. Victor was charged with having crossed the Guild's picket lines at Universal City Studios, Inc. during the month of April, 1973, for the purpose of rendering services for a company against whom the Guild was at such time on strike.

FINDING OF THE TRIAL COMMITTEE AND DECISION AND ORDER OF THE BOARD OF DIRECTORS

Pursuant to Article X, Section 7 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Trial Committee submitted, in writing, its findings, conclusions and recommendations to the Board of Directors. The Board of Directors has reviewed and considered the findings, conclusions and recommendations of the Trial Committee and hereby adopts said findings, to wit:

1. Mr. Victor, a member of the Guild, had been given full and timely notice both of the Rules for the Conduct of Members During a Strike, and of the Guild's Strike Order.

2. Mr. Victor nevertheless crossed the Guild's picket lines at Universal City Studios, Inc. during the month of April, 1973, and did at that time render services to a company against whom the Guild was at such time on strike.

3. Mr. Victor by such acts and conduct did violate the Guild's Strike Order and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973.

IT IS HEREBY ORDERED by the Board of Directors that DAVID VICTOR be expelled from membership in the Guild, effective ninety (90) days after the termination of the Guild's strike with the Association of Motion Picture and Television Producers, Inc., and that he be fined the sum of $50,000.00, said sum to be paid to the Guild no later than August 1, 1973.

Dated at Los Angeles, California, the 25th day of June, 1973.

For the Board of Directors of the
WRITERS GUILD OF AMERICA, WEST, INC.

By /s/ John Furia, Jr.
JOHN FURIA, JR., President of the
WRITERS GUILD OF AMERICA, WEST, INC.

GC-17I

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

ROBERT CINADER

The Trial Committee of the Writers Guild of America, west, Inc. (herein called the Guild) convened on Wednesday, August 22, 1973, at 2:30 P.M. at the offices of the Guild in Los Angeles, California, to hear testimony and to receive evidence in the above entitled matter. Said proceedings were duly called pursuant to the provisions of Article X of the Constitution and By-Laws of the Writers Guild of America, west, Inc., effective January 18, 1973.

This matter was heard before the following members of the Trial Committee:

Emmet Lavery, Chairman
Jack Ellinson
Sy Gomberg
Wendell Mayes
George Seaton

Milton Orman, Esq. represented the Guild on behalf of its Executive Director, Michael H. Franklin.

Robert Cinader was notified by Certified Mail on July 27, 1973, of the charges, time, date and place of the hearing. He was advised that he had the right to be present at the hearing and/or to be represented by counsel or a Current member of the Guild. Mr. Cinader appeared at the hearing and was represented by Robert A. Holzman of the law firm of Loeb & Loeb, and by Allen Susman of the law firm of Rosenfeld, Meyer & Susman.

This matter came before the Trial Committee pursuant to charges filed by the Guild's Board of Directors in accordance with Article X.B.1 of the Guild's Constitution

and By-Laws. Said charges alleged that Mr. Cinader was in violation of the Guild's Strike Order and Sections 1, 12, and 13 of the Rules for the Conduct of Members During A Strike, dated February 20, 1973, as amended May 1, 1973.

Specifically, Mr. Cinader was charged with: (1) Having crossed the Guild's picket line at Universal City Studios, Inc. during the month of June, 1973, without having informed the Guild in advance of the nature of his business with said company; and (2) having, during the month of June, 1973, rendered services for Universal City Studios, Inc., a company against whom the Guild was at such time on strike.

FINDING OF THE TRIAL COMMITTEE AND DECISION AND ORDER OF THE BOARD OF DIRECTORS

Pursuant to Article X, Section 7 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Trial Committee submitted, in writing, its findings, conclusions and recommendations to the Board of Directors. The Board of Directors has reviewed and considered the findings, conclusions and recommendations of the Trial Committee and hereby adopts said findings, to wit:

> Robert Cinader as charged did cross the Guild's picket lines at Universal City Studios, Inc., in June of 1973 and did render services during the month of June, 1973, to Universal City Studios, Inc., a company against which the Guild was at such time on strike.

IT IS HEREBY ORDERED by the Board of Directors that Robert Cinader be suspended for a period of three (3) years effective immediately and fined the sum of $5,000.00 plus the costs of the hearing, said sums to be paid to the Guild no later than September 6, 1973.

Dated at Los Angeles, California, this 31st day of August 1973.

For the Board of Directors of the
WRITERS GUILD OF AMERICA, WEST, INC.

By /s/ John Furia, Jr.
JOHN FURIA, JR., President of the
WRITERS GUILD OF AMERICA, WEST, INC.

GC-18

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601
Cable: INTWRITER, LOS ANGELES

July 27, 1973

CERTIFIED MAIL #70540
RETURN RECEIPT REQUESTED

Mr. Barry Crane
11924 Riverside Drive
No. Hollywood, CA 91607

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Crane:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/jeh
Encl.

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

BARRY CRANE

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 15th day of August, 1973, at 10:00 A.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Orders and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973 as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Paramount Pictures Corporation during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with Paramount Pictures Corporation; and (2) having during the months of March, April, May and June 1973, rendered services for Paramount Pictures Corporation, against whom the Guild was at such time on strike.

You have the right to be present at the aforementioned hearing, and to be represented by Counsel or by a Current member in good standing of the Guild. You also

have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

July 27, 1973

GC-19

In the Matter of

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

BARRY CRANE

The Trial Committee of the Writers Guild of America, west, Inc. (herein called the Guild) convened on Wednesday, August 15, 1973, at 10:00 A.M. at the offices of the Guild in Los Angeles, California, to hear testimony and to receive evidence in the above entitled matter. Said proceedings were duly called pursuant to the provisions of Article X of the Constitution and By-Laws of the Writers Guild of America, west, Inc., effective January 18, 1973.

This matter was heard before the following members of the Trial Committee:

Robert A. White, Chairman
E. Jack Neuman
John Lee Mahin
Norman Panama
Arnold Peyser

Milton Orman, Esq. represented the Guild on behalf of its Executive Director.

Barry Crane was notified by Certified Mail on July 27, 1973, of the charges, time, date and place of the hearing. He was advised that he had the right to be present at the hearing and/or to be represented by counsel or a Current member of the Guild. Mr. Crane did not attend the hearing. He was represented by counsel, Robert A. Holtzman and David G. Miller, of the law firm of Loeb & Loeb.

This matter came before the Trial Committee pursuant to charges filed by the Guild's Board of Directors in ac-

cordance with Article X.B.1 of the Guild's Constitution and By-Laws. Said charges alleged that Mr. Crane was in violation of the Guild's Strike Orders and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973. Specifically, Mr. Crane was charged with: (1) Having crossed the Guild's picket lines at Paramount Pictures Corporation during the months of March, April, May and June, 1973, without having informed the Guild in advance of the nature of his business with Paramount Pictures Corporation; and (2) having, during the months of March, April, May and June, 1973, rendered services for Paramount Pictures Corporation against whom the Guild was at such time on strike.

FINDING OF THE TRIAL COMMITTEE AND DECISION AND ORDER OF THE BOARD OF DIRECTORS

Pursuant to Article X, Section 7 of the Constitution and By-Laws of the Writers Guild of America, west, Inc. the Trial Committee submitted, in writing, its findings, conclusions and recommendations to the Board of Directors. The Board of Directors has reviewed and considered the findings, conclusions and recommendations of the Trial Committee and hereby adopts said findings, to wit: Barry Crane is guilty of violating the Guild's Strike Orders and Sections 1, 12, and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1978, as charged.

IT IS HEREBY ORDERED by the Board of Directors that Barry Crane be expelled from membership in the Guild, effective immediately, and that he be fined the sum of $10,000.00 plus costs of the hearing, said sums to be paid to the Guild no later September 6, 1973.

Dated at Los Angeles, California, this 31st day of August, 1973.

For the Board of Directors of the
WRITERS GUILD OF AMERICA, WEST, INC.

By /s/ John Furia, Jr.
JOHN FURIA, JR., President of the
WRITERS GUILD OF AMERICA, WEST, INC.

GC-20

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.
Member of International Writers Guild
8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601
Cable: INTWRITER, LOS ANGELES

November 8, 1973

CERTIFIED MAIL #70824
RETURN RECEIPT REQUESTED

Mr. Roger H. Lewis
555 South Burlingame Avenue
Los Angeles, California 90049

Re: NOTICE OF DISCIPLINARY HEARING AND CHARGES

Dear Mr. Lewis:

Pursuant to the provisions of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Guild herewith encloses its official NOTICE OF DISCIPLINARY HEARING AND CHARGES.

It would be appreciated if you would verify your attendance at the hearing by contacting the undersigned.

Very truly yours,

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel

JAM/blb
Enc.

IN THE MATTER OF

WRITERS GUILD OF AMERICA, WEST, INC.

vs.

ROGER H. LEWIS

NOTICE OF DISCIPLINARY HEARING AND CHARGES:

PLEASE TAKE NOTICE that pursuant to Article X, Section 1 of the Constitution and By-Laws of the Writers Guild of America, west, Inc., the Board of Directors of the Guild filed with the Guild's Executive Director the written charges set forth below. You are HEREBY NOTIFIED pursuant to Article X, Sections 4, 5 and 6 of the Constitution and By-Laws that a hearing on the charges made herein will take place on the 18th day of December, 1973, at 12:30 P.M. at the offices of the Writers Guild of America, west, Inc., located at 8955 Beverly Boulevard, Los Angeles, California.

NOTICE IS HEREBY GIVEN that you are charged with violation of the Guild's Strike Order and Sections 1, 12 and 13 of the Rules for the Conduct of Members During a Strike, dated February 20, 1973, as amended May 1, 1973, copies of which are attached hereto.

Specifically, you are charged with: (1) having crossed the Guild's picket lines at Metro-Goldwyn-Mayer Studios during the months of March, April, May and June 1973, without having informed the Guild in advance of the nature of your business with said company and without having obtained a Guild pass to enter said premises; (2) having during the months of March, April, May and June 1973, rendered services for Metro-Goldwyn-Mayer, Inc., a company against the Guild was at such times on strike.

You have the right to be present at the aforementioned hearing, and to be represented by counsel or by a Current member in good standing of the Guild. You also

have the right to introduce evidence, present witnesses on your own behalf and to cross-examine any witnesses who shall testify in support of the charges.

/s/ John A. Mendonsa
JOHN A. MENDONSA
Resident Counsel
WRITERS GUILD OF AMERICA, WEST, INC.

November 8, 1973

GC-23B

July 19, 1973

Michael H. Franklin, Esq.
Executive Director
Writers Guild of America, West, Inc.
8955 Beverly Boulevard
Los Angeles, California 90048

Dear Mr. Franklin:

Reference is made to the Finding of the Trial Committee and the Decision and Order of the Board of Directors of the Writers Guild of America, West, Inc. in the matter of *Writers Guild of America, West, Inc.* v. *Jon Epstein*, purporting to expel me from membership in the Guild and to fine me in the sum of $2,000.00, plus the cost of the hearing.

For the reasons advanced by my attorneys at the hearing on the charges against me, and for other good and sufficient reasons, the above mentioned Finding of the Trial Committee and Decision and Order of the Board and the proceedings had in connection therewith were and are illegal, void and unenforceable.

Pursuant to Article XB, Section 9 of the Constitution and By-Laws of the Guild, I hereby appeal said disciplinary action to the membership of the Guild.

The next annual meeting of the Guild is scheduled to be held some time in May, 1974, approximately ten months from the date of this letter. It appears from the wording of the Decision and Order of the Board and of Article XB, Section 9 of the Constitution and By-Laws that pending this appeal I will have none of the rights and privileges of membership of which I have been deprived by the action of the Board. Consequently, the period during which the appeal will be pending is unreasonably long, and therefore contrary to the provisions of law, including but not limited to the Landrum-Griffin Act. Demand is therefore made that the Decision and Order of the Board purporting to expel and fine me

be stayed pending exhaustion of the Guild's internal appeals procedure, that a meeting of the membership of the Guild at which this appeal may be heard be called at an early date, in any event not later than four months from the date of this letter, and that I be furnished with written notice of such meeting. If I have not received such written notice within thirty days from the date of this letter I will assume that the Board of Directors of the Guild has declined to call such a meeting of the membership and I will proceed accordingly.

Also, notwithstanding the provisions of Article XB, Section 9 of the Constitution and By-Laws, I hereby demand the right to appear and be represented at the meeting of the membership by counsel of my own choosing.

I hereby expressly reserve all rights and remedies available to me at law or in equity.

Very truly yours,

/s/ Jon Epstein
JON EPSTEIN

cc: Board of Directors
Writers Guild of America, West, Inc.

GC-23D

July 19, 1973

Michael H. Franklin, Esq.
Executive Director
Writers Guild of America, West, Inc.
8955 Beverly Boulevard
Los Angeles, California 90048

Dear Mr. Franklin:

Reference is made to the Finding of the Trial Committee and the Decision and Order of the Board of Directors of the Writers Guild of America, West, Inc. in the matter of *Writers Guild of America, West, Inc.* v. *Herman Saunders*, purporting to expel me from membership in the Guild and to fine me in the sum of $100.00, plus the cost of the hearing.

For the reasons advanced by my attorneys at the hearing on the charges against me, and for other good and sufficient reasons, the above mentioned Finding of the Trial Committee and Decision and Order of the Board and the proceedings had in connection therewith were and are illegal, void and unenforceable.

Pursuant to Article XB, Section 9 of the Constitution and By-Laws of the Guild, I hereby appeal said disciplinary action to the membership of the Guild.

The next annual meeting of the Guild is scheduled to be held some time in May, 1974, approximately ten months from the date of this letter. It appears from the wording of the Decision and Order of the Board and of Article XB, Section 9 of the Constitution and By-Laws that pending this appeal I will have none of the rights and privileges of membership of which I have been deprived by the action of the Board. Consequently, the period during which the appeal will be pending is unreasonably long, and therefore contrary to the provisions of law, including but not limited to the Landrum-Griffin Act. Demand is therefore made that the Decision

and Order of the Board purporting to expel and fine me be stayed pending exhaustion of the Guild's internal appeals procedure, that a meeting of the membership of the Guild at which this appeal may be heard be called at an early date, in any event not later than four months from the date of this letter, and that I be furnished with written notice of such meeting. If I have not received such written notice within thirty days from the date of this letter I will assume that the Board of Directors of the Guild has declined to call such a meeting of the membership and I will proceed accordingly.

Also, notwithstanding the provisions of Article XB, Section 9 of the Constitution and By-Laws, I hereby demand the right to appear and be represented at the meeting of the membership by counsel of my own choosing.

I hereby expressly reserve all rights and remedies available to me at law or in equity.

Very truly yours,

/s/ Herman S. Saunders
HERMAN S. SAUNDERS

cc: Board of Directors
Writers Guild of America, West, Inc.

GC-23E

July 19, 1973

Michael H. Franklin, Esq.
Executive Director
Writers Guild of America, West, Inc.
8955 Beverly Boulevard
Los Angeles, California 90048

Dear Mr. Franklin:

Reference is made to the Finding of the Trial Committee and the Decision and Order of the Board of Directors of the Writers Guild of America, West, Inc. in the matter of *Writers Guild of America, West, Inc.* v. *David Victor*, purporting to expel me from membership in the Guild and to fine me in the sum of $50,000.00, plus the cost of the hearing.

For the reasons advanced by my attorneys at the hearing on the charges against me, and for other good and sufficient reasons, the above mentioned Finding of the Trial Committee and Decision and Order of the Board and the proceedings had in connection therewith were and are illegal, void and unenforceable.

Pursuant to Article XB, Section 9 of the Constitution and By-Laws of the Guild, I hereby appeal said disciplinary action to the membership of the Guild.

The next annual meeting of the Guild is scheduled to be held some time in May, 1974, approximately ten months from the date of this letter. It appears from the wording of the Decision and Order of the Board and of Article XB, Section 9 of the Constitution and By-Laws that pending this appeal I will have none of the rights and privileges of membership of which I have been deprived by the action of the Board. Consequently, the period during which the appeal will be pending is unreasonably long, and therefore contrary to the provisions of law, including but not limited to the Landrum-Griffin Act. Demand is therefore made that the Decision and Order of the Board purporting to expel and fine me be stayed pending exhaustion of the Guild's internal appeals procedure, that a meeting of the membership of the

Guild at which this appeal may be heard be called at an early date, in any event not later than four months from the date of this letter, and that I be furnished with written notice of such meeting. If I have not received such written notice within thirty days from the date of this letter I will assume that the Board of Directors of the Guild has declined to call such a meeting of the membership and I will proceed accordingly.

Also, notwithstanding the provisions of Article XB, Section 9 of the Constitution and By-Laws, I hereby demand the right to appear and be represented at the meeting of the membership by counsel of my own choosing.

I hereby expressly reserve all rights and remedies available to me at law or in equity.

Very truly yours,

/s/ David Victor
DAVID VICTOR

cc: Board of Directors
Writers Guild of America, West, Inc.

GC-23F

September 26, 1973

Michael H. Franklin, Esq.
Executive Director
Writers Guild of America, West, Inc.
8955 Beverly Boulevard
Los Angeles, California 90048

Dear Mr. Franklin:

Reference is made to the Finding of the Trial Committee and Decision and Order of the Board of Directors of the Writers Guild of America, West, Inc. in the matter of *Writers Guild of America, West, Inc.* v. *David Levinson*, purporting to suspend my membership in the Guild for a period of two years and to fine me in the sum of $10,000.00, plus the costs of the hearing.

For the reasons advanced by my attorneys at the hearing on the charges against me, and for other good and sufficient reasons, the above mentioned Finding of the Trial Committee and Decision and Order of the Board and the proceedings had in connection therewith were and are illegal, void and unenforceable.

Pursuant to Article X-B, Section 9 of the Constitution and By-Laws of the Guild, I hereby appeal said disciplinary action to the membership of the Guild.

I understand that a special membership meeting will be scheduled during the month of November, 1973 to hear appeals in your purported disciplinary proceedings, and that this appeal will not be heard or considered until that time. It appears from the wording of the Decision and Order of the Board and of Article X-B, Section 9 of the Constitution and By-Laws that pending this appeal I will have none of the rights and privileges of membership of which I have been deprived by the action of the Board. Consequently, the period during which the appeal will be pending is unreasonably long, and therefore contrary to the provisions of law, including but not limited to the Landrum-Griffin Act. Demand is therefore made that the Decision and Order of the Board purporting to suspend

and fine me be stayed pending exhaustion of the Guild's internal appeals procedure.

Also, notwithstanding the provisions of Article X-B, Section 9 of the Constitution and By-Laws, I hereby demand the right to appear and be represented at the meeting of the membership by counsel of my own choosing.

I hereby expressly reserve all rights and remedies available to me at law or in equity.

Very truly yours,

/s/ David Levinson
DAVID LEVINSON

cc: Board of Directors
Writers Guild of America, West, Inc.

GC-23G

September 26, 1973

Michael H. Franklin, Esq.
Executive Director
Writers Guild of America, West, Inc.
8955 Beverly Boulevard
Los Angeles, California 90048

Dear Mr. Franklin:

Reference is made to the Finding of the Trial Committee and Decision and Order of the Board of Directors of the Writers Guild of America, West, Inc. in the matter of *Writers Guild of America, West, Inc.* v. *Robert Cinader*, purporting to suspend my membership in the Guild for a period of three years and to fine me in the sum of $5,000.00, plus the costs of the hearing.

For the reasons advanced by my attorneys at the hearing on the charges against me, and for other good and sufficient reasons, the above mentioned Finding of the Trial Committee and Decision and Order of the Board and the proceedings had in connection therewith were and are illegal, void and unenforceable.

Pursuant to Article X-8, Section 9 of the Constitution and By-Laws of the Guild, I hereby appeal said disciplinary action to the membership of the Guild.

I understand that a special membership meeting will be scheduled during the month of November, 1973 to hear appeals in your purported disciplinary proceedings, and that this appeal will not be heard or considered until that time. It appears from the wording of the Decision and Order of the Board and of Article X-B, Section 9 of the Constitution and By-Laws that pending this appeal I will have none of the rights and privileges of membership of which I have been deprived by the action of the Board. Consequently, the period during which the appeal will be pending is unreasonably long, and therefore contrary to the provisions of law, including but not limited to the Landrum-Griffin Act. Demand is therefore made that the Decision and Order of the Board purporting to suspend

and fine me be stayed pending exhaustion of the Guild's internal appeals procedure.

Also, notwithstanding the provisions of Article X-B, Section 9 of the Constitution and By-Laws, I hereby demand the right to appear and be represented at the meeting of the membership by counsel of my own choosing.

I hereby expressly reserve all rights and remedies available to me at law or in equity.

Very truly yours,

/s/ Robert Cinader
ROBERT CINADER

cc: Board of Directors
Writers Guild of America, West, Inc.

GC-23H

September 26, 1973

Michael H. Franklin, Esq.
Executive Director
Writers Guild of America, West, Inc.
8955 Beverly Boulevard
Los Angeles, California 90048

Dear Mr. Franklin:

Reference is made to the Finding of the Trial Committee and the Decision and Order of the Board of Directors of the Writers Guild of America, West, Inc. in the matter of *Writers Guild of America, West, Inc.* v. *Hugh Benson*, purporting to suspend my membership in the Guild for a period of two years and to fine me in the sum of $100.00, plus the costs of the hearing.

For the reasons advanced by my attorneys at the hearing on the charges against me, and for other good and sufficient reasons, the above mentioned Finding of the Trial Committee and Decision and Order of the Board and the proceedings had in connection therewith were and are illegal, void and unenforceable.

Pursuant to Article X-B, Section 9 of the Constitution and By-Laws of the Guild, I hereby appeal said disciplinary action to the membership of the Guild.

I understand that a special membership meeting will be scheduled during the month of November 1973, to hear appeals in your purported disciplinary proceedings, and that this appeal will not be heard or considered until that time. It appears from the wording of the Decision and Order of the Board and of Article X-B, Section 9 of the Constitution and By-Laws that pending this appeal I will have none of the rights and privileges of membership of which I have been deprived by the action of the Board. Consequently, the period during which the appeal will be pending is unreasonably long, and therefore contrary to the provisions of law, including but not limited to the Landrum-Griffin Act. Demand is therefore made that the Decision and Order of the Board purporting to suspend

and fine me be stayed pending exhaustion of the Guild's internal appeals procedure.

Also, notwithstanding the provisions of Article X-B, Section 9 of the Constitution and By-Laws, I hereby demand the right to appear and be represented at the meeting of the membership by counsel of my own choosing.

I hereby expressly reserve all rights and remedies available to me at law or in equity.

Very truly yours,

/s/ Hugh Benson
HUGH BENSON

cc: Board of Directors
Writers Guild of America, West, Inc.

GC-23I

September 26, 1973

Michael H. Franklin, Esq.
Executive Director
Writers Guild of America, West, Inc.
8955 Beverly Boulevard
Los Angeles, California 90048

Dear Mr. Franklin:

Reference is made to the Finding of the Trial Committee and the Decision and Order of the Board of Directors of the Writers Guild of America, West, Inc. in the matter of *Writers Guild of America, West, Inc.* v. *Barry Crane*, purporting to expel me from membership in the Guild and to fine me in the sum of $10,000.00, plus the costs of the hearing.

For the reasons advanced by my attorneys at the hearing on the charges against me, and for other good and sufficient reasons, the above mentioned Finding of the Trial Committee and Decision and Order of the Board and the proceedings had in connection therewith were and are illegal, void and unenforceable.

Pursuant to Article X-B, Section 9 of the Constitution and By-Laws of the Guild, I hereby appeal said disciplinary action to the membership of the Guild.

I understand that a special membership meeting will be scheduled during the month of November 1973, to hear appeals in your purported disciplinary proceedings, and that this appeal will not be heard or considered until that time. It appears from the wording of the Decision and Order of the Board and of Article X-B, Section 9 of the Constitution and By-Laws that pending this appeal I will have none of the rights and privileges of membership of which I have been deprived by the action of the Board. Consequently, the period during which the appeal will be pending is unreasonably long, and therefore contrary to the provisions of law, including but not limited to the Landrum-Griffin Act. Demand is therefore made that the Decision and Order of the Board purporting to expel and

fine me be stayed pending exhaustion of the Guild's internal appeals procedure.

Also, notwithstanding the provisions of Article X-B, Section 9 of the Constitution and By-Laws, I hereby demand the right to appear and be represented at the meeting of the membership by counsel of my own choosing.

I hereby expressly reserve all rights and remedies available to me at law or in equity.

Very truly yours,

/s/ Barry Crane
BARRY CRANE

cc: Board of Directors
Writers Guild of America, West, Inc.

GC-26A

[SEAL]

TWENTIETH CENTURY-FOX FILM CORPORATION

November 13, 1973

MR. ANDY KAPLAN
Mitchell, Silberberg & Knupp
1800 Century Park East
Los Angeles, CA 90067

RE: WGA Strike/Letters of Indemnification

Dear Andy:

Consistent with your inquiry, attached is a listing of those Hyphenates that were given letters of indemnification during the writers strike.

Should you require additional information, please do not hesitate to contact me.

Best regards,

/s/ D. E. S.
D. E. SLUSSER
Manager, Labor Relations

DES:rlg
Attachment
cc: D. E. Quigley

[SEAL]

TWENTIETH CENTURY-FOX FILM CORPORATION
P.O. Box 900, Beverly Hills, California 90213
Phone (213) 277-2211
Cable Address: Centfox, Los Angeles—Telex: 6-74875

March 8, 1973

Miss Wanda Whitman
10201 West Pico Boulevard
Los Angeles, California 90035

Dear Miss Whitman:

Pursuant to a reopening provision in the Theatrical and Television Collective Bargaining Agreement between the Writers Guild of America and ourselves, the Guild has elected to terminate the agreement, effective at midnight March 4, 1973. We have been negotiating with the Guild for a new collective bargaining agreement with a view to reaching an agreement which is fair and reasonable to the writers and the member companies of the Association of Motion Picture and Television Producers.

We intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.

If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render services for us in any capacity or you fail to report for picket duty. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful and the Guild's threat of fines, censure, expulsion and blacklisting is unenforceable.

In 1970 the Regional Office of the National Labor Relations Board advised us and the Guild that similar action and threatened action against members of the Guild was illegal.

We expect you to fulfill your contractual obligations to us as a supervisor and report to work notwithstanding any picket lines or other attempt to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part do so so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and which is legally sustained.

Very truly yours,

William J. Immerman
Vice President, Business Affairs

WJI:jhm

WRITERS GUILD INFORMATION

1) Mr. Robert Sherman
220 South Doheny Drive
Beverly Hills, CA 90211
Sent by Wm. Immerman

2) Mr. Robert Aldrich
10201 West Pico Blvd.
Los Angeles, CA 90035
Sent by Wm. Immerman

3) Mr. James Bridges
449 Skyewiay Road
Los Angeles, CA 90049
Sent by Wm. Immerman

4) Mr. Marvin Worth
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Gordon Stulberg

5) Mr. Irwin Allen
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Gordon Stulberg

6) Miss Wanda Whitman
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Wm. Immerman

7) Mr. Rob Cohen
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Wm. Immerman

8) Mr. Williams D'Angelo
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Gordon Stulberg

9) Mr. Ernie Frankel
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Gordon Stulberg

10) Mr. Anthony Wilson
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Gordon Stulberg

11) Mr. Jon Kubichan
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Gordon Stulberg

12) Mr. William Roberts
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Gordon Stulberg

13) Mr. Stan Hough
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Gordon Stulberg

14) Mr. Stuart Rosenberg
c/o William Morris Agency
151 El Camino Drive
Beverly Hills, CA 90212
Sent by Gordon Stulberg

15) Mr. Irving Ravetch
10201 W. Pico Blvd.
Los Angeles, CA 90035
Sent by Gordon Stulberg

PARAMOUNT PICTURES CORPORATION

EUGENE H. FRANK
Vice President and
West Coast Counsel

November 9, 1973

Andrew Kaplan, Esq.
Mitchell, Silberberg & Knupp
1800 Century Park East
Los Angeles, California 90067

Dear Mr. Kaplan:

You have advised me that you and Harry Keaton are handling, on behalf of AMPTP and its member companies, a number of disciplinary proceedings commenced by Writers Guild of America, West, against certain hyphenates, with reference to the WGA strike last spring, including proceedings brought against Martin Ransohoff, Albert S. Ruddy and Phil Kaufman.

In accordance with your request, I am enclosing copies of the telegrams sent by Paramount to certain persons and companies, including Messrs. Ransohoff, Ruddy and Kaufman.

Sincerely yours,

Eugene H. Frank

EHF:jm
c: A. N. Ryan
E. Tolkin
R. Schonland

NY: N. Flicker; W. Josiah, Jr.

Encl. to each

GL-26B

477

VIA TELEX

Fil

April 11, 1973

Please send the following wire to each of the following addressees indicating both addressees on each wire:

WALRUS AND ASSOCIATES, LTD.
C/O SCHIFF, HIRSCH, LEVINE
9777 WILSHIRE BOULEVARD, SUITE 800
BEVERLY HILLS, CALIFORNIA 90212

MR. PHIL KAUFMAN - white Storm
92A MALIBU COLONY
MALIBU, CALIFORNIA

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINAT THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

ALTHOUGH THE GUILD HAS CALLED A STRIKE, WE INTEND TO CONTINUI OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE OR WILL BE FURNISHING TO US THE SERVICES OF PHIL KAUFMAN AS A DIRECTOR IN CONNECTION WITH A FEATURE MOTION PICTURE. IF MR. KAUFMAN IS A MEMBE OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTING TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACITY" IN WHICH HE IS EMPLOYED. WE ALSO

UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICE FOR US IN ANY CAPACITY OR HE FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES FOR US IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

NOTWITHSTANDING THE STRIKE, WHICH WE HOPE WILL BE SETTLED, WE EXPECT YOU AND MR. KAUFMAN TO FULFILL YOUR CONTRACTUAL OBLIGATIONS TO US AND THAT YOU WILL FURNISH THE SERVICES OF MR. KAUFMAN AS THE DIRECTOR AND WILL CAUSE HIM TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS COMPLYING WI YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWISE DISCIPLINE MR. KAUFMAN FOR MEETING SUCH OBLIGATIONS TO HE WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOU COST TO YOU OR TO HIM AND HE WILL BE INDEMNIFIED AGAINST ANY FINE WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRES

FT:vh

Legan - ltr

INTER-COMMUNICATION

TO: ART RYAN

DATE: March 5, 1973

FROM: EDITH TOLKIN

SUBJECT: WGA strike

Herewith for your files copies of the wires signed by you as Vice-President on behalf of Paramount Pictures Corporation which were sent out today to "hyphenates" with respect to their non-writing services on certain projects for Paramount.

I have indicated the project(s) in the upper left hand corner of the first page, but this does not appear in the wire as sent.

Edith Tolkin

ET:vb

Attach.

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland

NY: Norman Flicker
Walter Josiah

480

BEST COPY AVAILABLE

VIA TELEX

March 5, 1973

Please send the following wire to each of the following addressees:

MR. PAUL MONASH
C/O ZIEGLER * ROSS, INC.
9255 SUNSET BOULEVARD
LOS ANGELES, CALIFORNIA 90069

MR. PAUL MONASH
C/O MITCHELL, SILBERBERG & KNU
1800 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067

DEAR MR. MONASH:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMEI WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERAT AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICA AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

IF YOU ARE A MEMBER OF THE WRITERS GUILD YOU MAY HAVE RECEIVE FROM THE GUILD A SET OF RULES PURPORTING TO GOVERN YOUR CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACITY" IN WHICH YOU ARE EMPLOYED. WE ALSO UNDERSTAND THAT THE GUILD MAY HAVE THREATENED YOU WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIK AND YOU RENDER SERVICES FOR US IN ANY CAPACITY OR YOU FAIL TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH YOUR SERVICES FOR US IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL

AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLIST IS UNJUSTIFIABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU TO FULFILL YOUR CONTRACTUAL OBLIGATIONS TO US AS A PRODUCER AND REPORT TO WORK NOTWITHSTANDI ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR COMPLYI WITH YOUR CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTANI THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGAL RIGH AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWISE DISCIPLINE YOU FOR MEETING SUCH OBLIGATIONS TO US, YOU WILL BE PROVIDED WITH A DEFE TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU, AND YOU WILL BE INDEMNIFIED AGAINST ANY FINE WHICH MIGHT BE IMPOSED AND IS LEGAL SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATIC

BY

A. N. RYAN, VICE-PRESII

ANR:bg

ET:vb

cc: BH: Lurene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker
Walter Josiah

VIA TELEX

March 5, 1973

Please send the following wire to each of the following addressees and include all addressees in each wire:

TANAGRA PRODUCTIONS, INC.
C/O JESS S. MORGAN & COMPANY, INC.
6300 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90048
ATTENTION: MR. LEONARD FREEDMAN

TANAGRA PRODUCTIONS, INC.
C/O CREATIVE MANAGEMENT ASSOCIA
(CMA)
8899 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE OR WILL BE FURNISHING TO US THE SERVICES OF JEAN-CLA TRAMONT AS THE ASSOCIATE PRODUCER IN CONNECTION WITH A FEATURE MOTION PICTURE. IF MR. TRAMONT IS A MEMBEI OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTING TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACITY" IN WHICH HE IS EMPLOYED. WE ALSO

UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVIC FOR US IN ANY CAPACITY OR HE FAILS TO REPORT FOR PICKET DUTY. AN ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES FOR US IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREA OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. TRAMONT TO FULFILL YOUR CONTRACTU OBLIGATIONS TO US AND THAT YOU WILL FURNISH THE SERVICES OF MR. TRAMONT AS THE ASSOCIATE PRODUCER AND WILL CAU HIM TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS COMPLYING W YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDE STAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGA RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR OR HIS PAR TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWISE DISCIPLINE MR. TRAMONT FOR MEETING SUCH OBLIGATIONS TO HE WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHO COST TO YOU OR TO HIM AND HE WILL BE INDEMNIFIED AGAINST ANY FI WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATI

BY

A. M. RYAN, VICE-PRE

ET:vb

cc: Bill: Eugene Frank
Studio: Dick Schonland
NY: Norman Flicker

484

VIA TELEX

March 5, 1973

Please send the following wire to the following addressee:

RASTAR PRODUCTIONS, INC.
C/O GERALD LIPSKY, ESQ.
190 NORTH CANON DRIVE
BEVERLY HILLS, CALIFORNIA

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE ENGAGED IN CERTAIN PRE-PRODUCTION ACTIVITIES FOR THE PROPOSED PRODUCTION OF A PICTURE FOR US AND YOU ARE OR WILL BE FURNISHING THE SERVICES OF ARTHUR PENN AS THE DIRECTOR . IF MR. PENN IS A MEMBER OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTI TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACI IN WHICH HE IS EMPLOYED. WE ALSO UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICES IN ANY CAPACITY IN CONNECTION WITH SUCH PICTURE OR FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES ON THE PICTURE IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENE ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. PENN TO FULFILL YOUR CONTRACTUAL OBLIGATIONS AND THAT YOU WILL FURNISH THE SERVICES OF MR. PENN AS THE DIRECTOR AND WILL CAUSE HIM TO CONTINUE TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS

COMPLYING WITH YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESOR TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOU OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERW DISCIPLINE MR. PENN FOR MEETING SUCH OBLIGATIONS TO US, H WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU OR TO HIM, AND HE WILL BE INDEMNIFIED AGAINST ANY FIN WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRESID

ET:vb

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker
Walter Josiah

VIA TELEX

March 5, 1973

Please send the following wire to the following addressee:

MILLER-MILKIS PRODUCTIONS, INC.
C/O KENNETH ZIFFREN, ESQ.
10889 WILSHIRE BOULEVARD
SUITE 1260
LOS ANGELES, CALIFORNIA 90025

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE OR WILL BE FURNISHING TO US THE SERVICES OF THOMAS L. AND EDWARD M. MILKIS AS THE CO-PRODUCERS IN CONNECTION WITH A FEATURE MOTION PICTURE. IF MR. MILLER OR MR. MILKIS IS A MEMBER OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTING TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACITY" IN WHICH HE IS EMPLOYED. WE ALSO

UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICE FOR US IN ANY CAPACITY OR HE FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES FOR US IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MESSRS. MILLER AND MILKIS TO FULFILL YOUR CONTRACTUAL OBLIGATIONS TO US AND THAT YOU WILL FURNISH THE SERVICES OF MESSRS. MILLER AND MILKIS AS THE PRODUCERS AND WILL CAUSE THEM TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR THEIR COMPLYING WITH YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR OR THEIR PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWISE DISCIPLINE MR. MILLER AND/OR MR. MILKIS FOR MEETING SUCH OBLIGATIONS TO HE WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOU COST TO YOU OR TO HIM AND HE WILL BE INDEMNIFIED AGAINST ANY FINE WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

VIA TELEX

March 5, 1973

Please send the following wire to each of the following addressees and include all of the addressees in each wire:

FRANCIS FORD COPPOLA PRODUCTIONS, INC.
C/O CREATIVE MANAGEMENT ASSOCIATES (CMA)
8899 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048

FRANCIS FORD COPPOLA PRODUCTIONS, INC.
C/O ROSENFELD, MEYER & SUSMAN
9601 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90210
ATTENTION: NORMAN GAREY, ESQ.

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE ENGAGED IN CERTAIN PRE-PRODUCTION ACTIVITIES FOR THE PROPOSED PRODUCTION OF A PICTURE FOR US AND YOU ARE OR WILL BE FURNISHING THE SERVICES OF FRANCIS FORD COPPOLA AS THE DIRECTOR AND THE PRODUCER. IF MR. COPPOLA IS A MEMBER OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTI TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACI IN WHICH HE IS EMPLOYED. WE ALSO UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICES IN ANY CAPACITY IN CONNECTION WITH SUCH PICTURE OR FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES ON THE PICTURE IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. COPPOLA TO FULFILL YOUR CONTRACTUAL OBLIGATIONS AND THAT YOU WILL FURNISH THE SERVICES OF MR. COPPOLA AS THE DIRECTOR AND THE PRODUCER AND WILL CAUSE HIM TO CONTINUE TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS

COMPLYING WITH YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESOR TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOU OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERW DISCIPLINE MR. COPPOLA FOR MEETING SUCH OBLIGATIONS TO US, HI WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU OR TO HIM, AND HE WILL BE INDEMNIFIED AGAINST ANY FIN WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRESIDI

ET:vb

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker
Walter Josiah

FEATURE PROJECTS

VIA TELEX

March 5, 1973

Please send the following wire to the following addressee:

MARTIN RANSOHOFF PRODUCTIONS, INC.
9401 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE OR WILL BE FURNISHING TO US THE SERVICES OF MARTIN RANSOHOFF AS THE PRODUCER IN CONNECTION WITH A FEATURE MOTION PICTURE. IF MR. RANSOHOFF IS A MEMBE OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTING TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACITY" IN WHICH HE IS EMPLOYED. WE ALSO

UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICES FOR US IN ANY CAPACITY OR HE FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES FOR US IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. RANSOHOFF TO FULFILL YOUR CONTRACTUAL OBLIGATIONS TO US AND THAT YOU WILL FURNISH THE SERVICES OF MR. RANSOHOFF AS THE PRODUCER AND WILL CAUSE HIM TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS COMPLYING WIT YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWISE DISCIPLINE MR. RANSOHOFF FOR MEETING SUCH OBLIGATIONS TO U HE WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU OR TO HIM AND HE WILL BE INDEMNIFIED AGAINST ANY FINE WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRESI

ET:vb

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker
Walter Josiah

494

"THE POLICE C N TION"

VIA TELEX

March 5, 1973

Please send the following wire to each of the following addressees:

MR. HOWARD W. KOCH
C/O MILTON A. RUDIN, ESQ.
9601 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90210

MR. HOWARD W. KOCH
PARAMOUNT PICTURES CORPORATION
5451 MARATHON STREET
HOLLYWOOD, CALIFORNIA 90038

DEAR MR. KOCH:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEME WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERAT AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICA AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

IF YOU ARE A MEMBER OF THE WRITERS GUILD YOU MAY HAVE RECEIVE FROM THE GUILD A SET OF RULES PURPORTING TO GOVERN YOUR CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACITY" IN WHICH YOU ARE EMPLOYED. WE ALSO UNDERSTAND THAT THE GUILD MAY HAVE THREATENED YOU WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE ANI YOU RENDER SERVICES FOR US IN ANY CAPACITY OR YOU FAIL TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH YOUR SERVICES FOR US IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL

AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTI IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU TO FULFILL YOUR CONTRACTUAL OBLIGATIONS TO US AS A PRODUCER AND AS A DIRECTOR AND REPORT TO WORK NOTWITHSTANDIN ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR COMPLYING WITH YOUR CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWISE DISCIPLINE YOU FOR MEETING SUCH OBLIGATIONS TO US, YOU WILL BE PROVIDED WITH A DEFENS TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU, AND YOU WILL BE INDEMNIFIED AGAINST ANY FINE WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRESIDEN

ANR by F

ET:vb

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker

"THE DICE MAN"

VIA TELEX March 5, 1973

Please send the following wire to each of the following addressees and include all of the addressees in each wire:

SACKVILLE PRODUCTIONS, LIMITED
C/O MICHAEL OLIVER, ESQ.
BERGER, OLIVER & COMPANY
40 PICCADILLY
LONDON W.1., ENGLAND

JOHN SCHLESINGER SERVICES, LTD.
IBEX HOUSE
MINORIES
LONDON, ENGLAND

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE OR WILL BE FURNISHING TO US THE SERVICES OF JOHN SCHLESINGER AS THE DIRECTOR IN CONNECTION WITH A FEATURE MOTION PICTURE. IF MR. SCHLESINGER IS A MEMBER OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTING TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACITY" IN WHICH HE IS EMPLOYED. WE ALSO

UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICE FOR US IN ANY CAPACITY OR HE FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES FOR US IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. SCHLESINGER TO FULFILL YOUR CONTRACTUAL OBLIGATIONS TO US AND THAT YOU WILL FURNISH THE SERVICES OF MR. SCHLESINGER AS THE DIRECTOR AND WILL CAUSE HIM TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS COMPLYING WIT YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWISE DISCIPLINE MR. SCHLESINGER FOR MEETING SUCH OBLIGATIONS TO U HE WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU OR TO HIM AND HE WILL BE INDEMNIFIED AGAINST ANY FINE WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

RYAN, VICE PRESID

498

"HIT"

VIA TELEX

March 5, 1973

Please send the following wire to each of the following addressees and include all of the addressees in each wire:

FURIE-SENTINEL-HARKOR PRODUCTIONS,
A JOINT VENTURE
C/O ROSENFELD, MEYER & SUSMAN
9601 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90210

FURIE PRODUCTIONS, INC.
C/O CREATIVE MANAGEMENT ASSOCIATES
(CMA)
8899 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048

SENTINEL FILM CORPORATION
C/O CREATIVE MANAGEMENT ASSOCIATES
(CMA)
8899 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048

HARKOR, INC.
C/O MILLER & CO.
1256 WESTWOOD BOULEVARD
LOS ANGELES, CALIFORNIA 90024
ATTENTION: LOU LEVITAN

SENTINEL FILM CORPORATION
C/O ALAN R. TRUSTMAN
PARKMAN TAVERN
CONCORD, MASSACHUSETTS 91742

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE PRODUCING A PICTURE FOR US AND YOU ARE OR WILL BE FURNISHING THE SERVICES OF SIDNEY FURIE AS THE DIRECTOR . IF MR. FURIE IS A MEMBER OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTING TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACITY IN WHICH HE IS EMPLOYED. WE ALSO UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICES IN ANY CAPACITY IN CONNECTION WITH SUCH PICTURE OR FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES ON THE PICTURE IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. FURIE TO FULFILL YOUR CONTRACTUAL OBLIGATIONS AND THAT YOU WILL PRODUCE THE PICTURE AND FURNISH THE SERVICES OF MR. FURIE AS THE DIRECTOR AND WILL CAUSE HIM TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS

COMPLYING WITH YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUS
THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESO
TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YO
OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHER
DISCIPLINE MR. FURIE FOR MEETING SUCH OBLIGATIONS TO US, I
WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOUT
COST TO YOU OR TO HIM, AND HE WILL BE INDEMNIFIED AGAINST ANY FI
WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRESID

AR by ET

ET:vb

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker
Walter Josiah

"PAPER MOON'

VIA TELEX

March 5, 1973

Please send the following wire to each of the following addressees and include all of the addressees in each wire:

PREMIER DIRECTORS COMPANY
C/O ROSENFELD, MEYER & SUSMAN
9601 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90210
ATTN: NORMAN H. GAREY, ESQ.

PREMIER DIRECTORS COMPANY
C/O SCHWARTZMAN & GREENBERG
9777 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90212
ATTN: JACK SCHWARTZMAN, ESQ.

PREMIER DIRECTORS COMPANY
C/O WILLIAM MORRIS AGENCY, INC.
151 EL CAMINO DRIVE
BEVERLY HILLS, CALIFORNIA 90212
ATTN: ROGER DAVIS, ESQ.

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE PRODUCING A PICTURE FOR US AND YOU ARE OR WILL BE FURNISHING THE SERVICES OF PETER BOGDANOVICH AS THE PRODUCER THE DIRECTOR . IF MR. BOGDANOVICH IS A MEMBER OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTIN TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACIT IN WHICH HE IS EMPLOYED. WE ALSO UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICES IN ANY CAPACITY IN CONNECTION WITH SUCH PICTURE OR FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES ON THE PICTURE IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. BOGDANOVICH TO FULFILL YOUR CONTRACTUAL OBLIGATIONS AND THAT YOU WILL PRODUCE THE PICTURE AND FURNISH THE SERVICES OF MR. BOGDANOVICH AS THE PRODUCER AND THE DIRECTOR AND WILL CAUSE HIM TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDI ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS

COMPLYING WITH YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWI DISCIPLINE MR. BOGDANOVICH FOR MEETING SUCH OBLIGATIONS TO US, HE WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU OR TO HIM, AND HE WILL BE INDEMNIFIED AGAINST ANY FINE WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRESID

ET:vb

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker
Walter Josiah

504

"THE CONVERSATION"

VIA TELEX

March 5, 1973

Please send the following wire to each of the following addressees and include all of the addressees in each wire:

PREMIER DIRECTORS COMPANY
C/O ROSENFELD, MEYER & SUSMAN
9601 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90210
ATTN: NORMAN H. GAREY, ESQ.

PREMIER DIRECTORS COMPANY
C/O SCHWARTZMAN & GREENBERG
9777 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90212
ATTN: JACK SCHWARTZMAN, ESQ.

PREMIER DIRECTORS COMPANY
C/O WILLIAM MORRIS AGENCY, INC.
151 EL CAMINO DRIVE
BEVERLY HILLS, CALIFORNIA 90212
ATTN: ROGER DAVIS, ESQ.

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINAT THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE PRODUCING A PICTURE FOR US AND YOU ARE OR WILL BE FURNISHING THE SERVICES OF FRANCIS FORD COPPOLA AS THE PRODUCER AI THE DIRECTOR . IF MR. COPPOLA . IS A MEMBER OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTIN TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACIT IN WHICH HE IS EMPLOYED. WE ALSO UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICES IN ANY CAPACITY IN CONNECTION WITH SUCH PICTURE OR FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES ON THE PICTURE IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. COPPOLA TO FULFILL YOUR CONTRACTUAL OBLIGATIONS AND THAT YOU WILL PRODUCE THE PICTURE AND FURNISH THE SERVICES OF MR. COPPOLA AS THE PRODUCER AND THE DIRECTOR AND WILL CAUSE HIM TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDI ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS

COMPLYING WITH YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWIS DISCIPLINE MR. COPPOLA FOR MEETING SUCH OBLIGATIONS TO US, HE WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU OR TO HIM, AND HE WILL BE INDEMNIFIED AGAINST ANY FINE WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRESIDE

ET:vb

ank by Ef

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker
Walter Josiah

VIA TELEX

March 5, 1973

Please send the following wire to the following addressee:

ALBERT S. RUDDY PRODUCTIONS, INC.
C/O GANG, TYRE & BROWN
6400 SUNSET BOULEVARD
HOLLYWOOD, CALIFORNIA 90028

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE ENGAGED IN CERTAIN PRE-PRODUCTION ACTIVITIES FOR THE PROPOSED PRODUCTION OF PICTURES FOR US AND YOU ARE OR WILL BE FURNISHING THE SERVICES OF ALBERT S. RUDDY AS THE PRODUCER. IF MR. RUDDY IS A MEMBER OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTI TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACIT IN WHICH HE IS EMPLOYED. WE ALSO UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICES IN ANY CAPACITY IN CONNECTION WITH SUCH PICTURE OR FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES ON THE PICTURE IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. RUDDY TO FULFILL YOUR CONTRACTUAL OBLIGATIONS AND THAT YOU WILL FURNISH THE SERVICES OF MR. RUDDY AS THE PRODUCER AND WILL CAUSE HIM TO CONTINUE TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS

COMPLYING WITH YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESORT TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOUR OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERWIS DISCIPLINE MR. RUDDY FOR MEETING SUCH OBLIGATIONS TO US, HE WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU OR TO HIM, AND HE WILL BE INDEMNIFIED AGAINST ANY FINE WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRESIDE

ANR:bwf

ET:vb

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker
Walter Josiah

"A SEA CHA

VIA TELEX

March 5, 1973

Please send the following wire to the following addressee:

HILLER PRODUCTIONS, INC.
C/O PAUL, WEISS, RIFKIND, WHARTON & GARRISON
345 PARK AVENUE
NEW YORK, NEW YORK
ATTENTION: ROBERT H. MONTGOMERY III, ESQ.

GENTLEMEN:

PURSUANT TO A REOPENING PROVISION IN THE THEATRICAL AND TELEVISION COLLECTIVE BARGAINING AGREEMENT BETWEEN THE WRITERS GUILD OF AMERICA AND OURSELVES, THE GUILD HAS ELECTED TO TERMINATE THE AGREEMENT, EFFECTIVE AT MIDNIGHT MARCH 4, 1973. WE HAVE BEEN NEGOTIATING WITH THE GUILD FOR A NEW COLLECTIVE BARGAINING AGREEMENT WITH A VIEW TO REACHING AN AGREEMENT WHICH IS FAIR AND REASONABLE TO THE WRITERS AND THE MEMBER COMPANIES OF THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS.

IF THE GUILD CALLS A STRIKE, WE INTEND TO CONTINUE OUR OPERATIONS AND MEET OUR CONTRACTUAL AND MORAL OBLIGATIONS TO SUPPLY THEATRICAL AND TELEVISION MOTION PICTURES TO OUR CUSTOMERS AND THE PUBLIC.

YOU ARE ENGAGED IN CERTAIN PRE-PRODUCTION ACTIVITIES FOR THE PROPOSED PRODUCTION OF A PICTURE FOR US AND YOU ARE OR WILL BE FURNISHING THE SERVICES OF ARTHUR PENN AS THE DIRECTOR . IF MR. PENN IS A MEMBER OF THE WRITERS GUILD HE MAY HAVE RECEIVED FROM THE GUILD A SET OF RULES PURPORTING TO GOVERN HIS CONDUCT DURING THE STRIKE "REGARDLESS OF THE CAPACITY" IN WHICH HE IS EMPLOYED. WE ALSO UNDERSTAND THAT THE GUILD MAY HAVE THREATENED HIM WITH FINES AND BLACKLISTING IN THE EVENT IT CALLS A STRIKE AND HE RENDERS SERVICES IN ANY CAPACITY IN CONNECTION WITH SUCH PICTURE OR FAILS TO REPORT FOR PICKET DUTY. ANY ATTEMPT OF THE GUILD TO INTERFERE WITH HIS SERVICES ON THE PICTURE IN A CAPACITY OTHER THAN AS A WRITER IS UNLAWFUL AND THE GUILD'S THREAT OF FINES, CENSURE, EXPULSION AND BLACKLISTING IS UNENFORCEABLE.

IN 1970 THE REGIONAL OFFICE OF THE NATIONAL LABOR RELATIONS BOARD ADVISED US AND THE GUILD THAT SIMILAR ACTION AND THREATENED ACTION AGAINST MEMBERS OF THE GUILD WAS ILLEGAL.

SHOULD THERE BE A STRIKE, AND WE HOPE THERE WILL NOT BE, WE EXPECT YOU AND MR. PENN TO FULFILL YOUR CONTRACTUAL OBLIGATIONS AND THAT YOU WILL FURNISH THE SERVICES OF MR. PENN AS THE DIRECTOR AND WILL CAUSE HIM TO CONTINUE TO REPORT TO WORK ON THE PICTURE NOTWITHSTANDING ANY PICKET LINES OR OTHER ATTEMPT TO INTERFERE WITH YOUR OR HIS

COMPLYING WITH YOUR RESPECTIVE CONTRACTUAL OBLIGATIONS. WE TRUST THAT YOU UNDERSTAND THAT WE WILL HAVE NO ALTERNATIVE BUT TO RESOR TO OUR LEGAL RIGHTS AND REMEDIES IN THE EVENT OF A FAILURE ON YOU OR HIS PART TO DO SO. SHOULD THE GUILD ATTEMPT TO FINE OR OTHERW DISCIPLINE MR. PENN FOR MEETING SUCH OBLIGATIONS TO US, H WILL BE PROVIDED WITH A DEFENSE TO ANY SUCH PROCEEDING, WITHOUT COST TO YOU OR TO HIM, AND HE WILL BE INDEMNIFIED AGAINST ANY FIN WHICH MIGHT BE IMPOSED AND IS LEGALLY SUSTAINED.

VERY TRULY YOURS,

PARAMOUNT PICTURES CORPORATION

BY

A. N. RYAN, VICE-PRESID

ANR by E

ET:vb

cc: BH: Eugene Frank
Ralph Kamon

Studio: Dick Schonland
NY: Norman Flicker
Walter Josiah

GC-26C

COLUMBIA PICTURES
COLGEMS SQUARE
Burbank, California 91505

November 9, 1973

Andy Kaplan, Esq.
Mitchell, Silberberg & Knupp
1800 Century Park East
Los Angeles, California 90067

Re: WRITERS GUILD

Dear Andy:

As I informed you in our telephone conversation the Columbia Pictures Division of Columbia Pictures Industries, Inc. did not send any letters to hyphenates either prior to or during the writers strike, since as far as it should be determined, there were no members of the writers guild employed by Columbia in capacities other than that of writers.

Screen gems sent letters, in the forms previously sent to you, to the following people and on the following dates:

Harry Ackerman	3/5	
William S. Bickley	3/5	
Henry Colman	3/5	
Gordon Farr	3/5	
Seymour Friedman	3/5	
Arnold Kane	3/5	
Sidney Kalcheim	3/5	
Tom Gries	3/13	
William Asher	4/17	(letter went to his lending company-Ashmont Productions, Inc.)
Bruce Johnson	5/30	
Duke Vincent	5/30	
W. L. Baumes	5/30	

If you need any additional information, or copies of each letter, please let me know.

Kindest regards.

Yours truly,

/s/ Steve
STEVEN E. FAYNE

SEF/rm

COLUMBIA PICTURES
COLGEMS SQUARE
Burbank, California 91505

November 8, 1973

Andy Kaplan, Esq.
Mitchell, Silberberg & Knupp
1800 Century Park East
Los Angeles, California 90067

Re: WRITERS GUILD

Dear Andy:

Enclosed are samples of the letters which weren sent to hyphenates prior to and during the course of the writers strike. I hope this is the material that you needed. If you need a complete list of the people who received such letters, please let me know immediately as that might take considerable digging.

Kindest regards.

Yours truly,

/s/ Steve
STEVEN E. FAYNE

SEF/rm
Enclosures

SCREEN GEMS

Colgems Square, Burbank, California 91505
(213) 843-6000

May 30, 1973

Mr. Duke Vincent
Colgems Square
Burbank, California 91505

Dear Mr. Vincent:

Pursuant to a reopening provision in the Theatrical and Television Collective Bargaining Agreement between the Writers Guild of America and ourselves, the Guild elected to terminate the Agreement, effective at midnight March 4, 1973. We have been negotiating with the Guild for a new collective bargaining agreement with a view to reaching an agreement which is fair and reasonable to the writers and to the member companies of the Association of Motion Picture and Television Producers.

Notwithstanding the Guild's decision to call a strike, we intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.

If you are a member of the Writers Guild, you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and black-listing in the event you render services for us in any capacity or fail to report for picket duty during the strike. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful, and the Guild's threat of fines, censure, expulsion and black-listing is unenforceable.

In 1970, the Regional Office of the National Labor Relations Board advised us and the Guild that similar action and threatened action against members of the Guild was illegal.

We expect you to fulfill your contractual obligations to us as a Producer and report to work notwithstanding

any picket lines or other attempt to interfere with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and is legally sustained.

Very truly yours,

SCREEN GEMS, a Division of
Columbia Pictures Industries, Inc.

By _____
RAYMOND KURTZMAN
Vice President
Studio Business Affairs

GC-26D

WARNER BROS. INC.
4000 Warner Blvd., Burbank, California 91505
(213) 843-6000
CABLE ADDRESS: WARBROS

November 15, 1973

Mr. Andrew Kaplan
Mitchell, Silberberg and Knupp
1800 Century Park East
Los Angeles, California 90067

Dear Andy:

In response to your request, listed below are the persons who were sent copies of the letter previously forwarded to you:

Harry Keller	Gene Sacks	Paul Mazursky
Stanley Kubrick	Dean Jackson	Michael Wayne
Robert Fryer	Michael Hamilberg	Paul Bogart
Floyd Mutrux	Anthony Harvey	Fred Coe
Sidney Beckerman	Paul Schrader	John J. Furia, Jr.
William Tennant	John Huston	E. J. Neumann
Mel Brooks	Stan Kanter	Garry Marshall
Harvey Matofsky	Marty Elfand	Gene Roddenberry
Fred Weintraub	Michael Crichton	Sam Rolfe
Carl Milliken	John Strong	A. J. Carruthers
Michael Hertzberg	James Schneider	Jack Starrett
Richard Rush	Duke Vincent	William Hendricks
Neill Simon	Anthony Spinner	Herb Ross
Howard Krietsek	Bruce Johnson	James Cresson
William Friedkin	Gerald Schatzberg	Michael Hoye
Robert Clouse	Leonard Schrader	
Jan Troell	Charles Eastman	

Very truly yours,

s/ Arthur Schaefer
ARTHUR SCHAEFER
Director of Industrial Relations

AS:grm

GC-26D

WARNER BROS. INC.

4000 Warner Blvd., Burbank, California 91505
(213) 843-6000

CABLE ADDRESS: WARBROS

March 5, 1973

Pursuant to a reopening provision in the Theatrical and Television Collective Bargaining Agreement between the Writers Guild of America and ourselves, the Guild has elected to terminate the agreement, effective at midnight March 4, 1973. We have been negotiating with the Guild for a new collective bargaining agreement with a view to reaching an agreement which is fair and reasonable to the writers and the member companies of the Association of Motion Picture and Television Producers.

If the Guild calls a strike, we intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.

If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render services in any capacity or you fail to report for picket duty. Any attempt of the Guild to interfere with your services in a capacity other than as a writer is unlawful and the Guild's threat of fines, censure, expulsion and blacklisting is unenforceable.

In 1970 the Regional Office of the National Labor Relations Board advised us and the Guild that similar action and threatened action against members of the Guild was illegal.

Should there be a strike, and we hope there will not be, we expect you to fulfill your contractual obligations

as a producer, director or supervisor as the case may be, and report to work notwithstanding any picket lines or other attempt to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and is legally sustained.

Very truly yours,

WARNER BROS. INC.
By /s/ [Illegible]
Assistant Secretary

GC-26E

METRO-GOLDWYN-MAYER INC.

10202 West Washington Blvd.
Culver City, California 90230
(213) 836-3000

BENJAMIN B. KAHANE
Director of Industrial Relations

November 9, 1973

Mr. Andy Kaplan
Mitchell, Silverberg & Knupp
1800 Century Park East
Los Angeles, California 90067

Dear Mr. Kaplan:

We are enclosing a copy of a letter transmitted to the below listed individuals March 5, 1973 setting forth the position of this company with respect to the rights and obligations of such individuals in the event of a strike by the Writers Guild of America.

Reza Badiyi
Allan G. Balter
Hugh Benson
John D. F. Black
James Boyle
Don Brinkley
C. G. Carroll, III
Michael Crichton
Mel Epstein
Norman Felton
Bud Freeman
Joseph Gantman
Frank Glicksman
Jack Haley, Jr.
David Karp
Roger Lewis
Burt Nodella
Bruce Paltrow
Gordon Parks
Sam Peckinpah
Joyce Selznick
Jack Sher
Peter Stone
Russell Thacher
Al C. Ward
William R. Woodfield

Sincerely,

/s/ Ben B. Kahane
BENJAMINE B. KAHANE

BBK:tw
Attachment

[SEAL]
MGM

METRO-GOLDWYN-MAYER INC.

10202 West Washington Blvd.
Culver City, California 90230
(213) 836-3000

March 5, 1973

Pursuant to a reopening provision in the Theatrical and Television Collective Bargaining Agreement between the Writers Guild of America and ourselves, the Guild has elected to terminate the agreement, effective at midnight March 4, 1973. We have been negotiating with the Guild for a new collective bargaining agreement with a view to reaching an agreement which is fair and reasonable to the writers and the member companies of the Association of Motion Picture and Television Producers.

If the Guild calls a strike, we intend to continue our operations and meet our contractual and moral obligations to supply Theatrical and Television motion pictures to our customers and the public.

If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render service for us in any capacity or you fail to report for picket duty. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful and the Guild's threat of fines, censure, expulsion and blacklisting is unenforceable.

In 1970 the Regional Office of the National Labor Relations Board advised us and the Guild that similar action and threatened action against members of the Guild was illegal.

Should there be a strike, and we hope there will not be, we expect you to fulfill your contractual obligations to us

as a producer director supervisor and report to work notwithstanding any picket lines or other attempt to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and is legally sustained.

Very truly yours,

METRO-GOLDWYN-MAYER INC.

By _____
Vice President

FER/BP:lcd

[SEAL]

MGM MEMORANDUM

FROM: Bradner Petersen

TO: Ben Kahane

DATE: 3/6/73

SUBJECT: NOTICES TO WGA HYPHENATE MEMBERS

Enclosed is a list of WGA hyphenate members to whom notices were sent 3/5/73 advising them that they should report to render their services as a director, producer or supervisor and that they would be indemnified against fines by the Guild for rendering services or refusing to cross picket lines. Also enclosed is a copy of the letter for your information.

If there are other persons we have overlooked, it would still be appropriate to send out a similar form of letter.
/s/ BP

BP:lcd

Enclosures

cc: Messrs. Frank Rosenfelt (w/enclosures)
Frank Davis " "
Lindsley Parsons, Jr. " "
Harris Katleman " "
C. Wheeler Coberly " "
Dale Hutchinson " "

GC-26F

[LOGO]

WALT DISNEY PRODUCTIONS

500 So. Buena Vista St., Burbank, California 91505
Cable Address: Disney

March 5, 1973

Mr. Roy E. Disney
10010 Toluca Lake Avenue
North Hollywood, California 91602

Dear Mr. Disney:

Pursuant to a reopening provision in the Theatrical and Television Collective Bargaining Agreement between the Writers Guild of America and ourselves, the Guild has elected to terminate the agreement, effective at midnight March 4, 1973. We have been negotiating with the Guild for a new collective bargaining agreement with a view to reaching an agreement which is fair and reasonable to the writers and the member companies of the Association of Motion Picture and Television Producers.

If the Guild calls a strike, we intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.

If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render services for us in any capacity or you fail to report for picket duty. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful and the Guild's threat of fines, expulsion and blacklisting is unenforceable.

In 1970 the Regional Office of the National Labor Relations Board advised us and the Guild that similar action and threatened action against members of the Guild was illegal.

Should there be a strike, and we hope there will not be, we expect you to fulfill your contractual obligations to us as a Producer and report to work notwithstanding any picket lines or other attempt to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and is legally sustainable.

Very truly yours,

WALT DISNEY PRODUCTIONS
By /s/ W. A. Anderson

WALT DISNEY PRODUCTIONS CELEBRATES 50 HAPPY YEARS OF FAMILY ENTERTAINMENT

November 9, 1973

Mr. Andrew Kaplan
Mitchell, Silberberg & Knupp
1800 Century Park East
Los Angeles, California

Dear Andy:

Pursuant to your request, the following Disney hyphenates received letters instructing them to report to work in non-writing capacities in the event of a Writers strike:

James Algar
William Bruckner
Larry Clemmons
Roy E. Disney
Gabe Essoe
Winston Hibler
Ward Kimball
Thomas Leetch
Bob Metzler
Frank Paris
Robert Stephenson
William Walsh

Sincerely,

/s/ Edward P. Prelock
EDWARD P. PRELOCK
Manager, Labor Relations

EPP:ps

GC-27

March 5, 1973

Mr. Andrew J. Fenady
Bing Crosby Productions, Inc.
780 North Coner Street
Hollywood, California 90038

Dear Mr. Fenady:

Pursuant to a reopening provision in the Theatrical and Television Collective Bargaining Agreement between the Writers Guild of America and ourselves, the Guild has elected to terminate the agreement, effective at midnight March 4, 1973. We have been negotiating with the Guild for a new collective bargaining agreement with a view to reaching an agreement which is fair and reasonable to the writers and the member companies of the Association of Motion Picture and Television Producers.

If the Guild calls a strike, we intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.

If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render services for us in any capacity or you fail to report for picket duty. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful and the Guild's threat of fines, censure, expulsion and blacklisting is unenforceable.

In 1970 the Regional Office of the National Labor Relations Board advised us and the Guild that similar action and threatened action against members of the Guild was illegal.

Should there be a strike, and we hope there will not be, we expect you to fulfill your contractual obligations to

us as a producer and report to work notwithstanding any picket lines or other attempt to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attemp to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and is legally sustained.

Very truly yours,

J. R. Rodgers

JRR/jj
cc: Charles A. Pratt
Robert Broder

GC-28

CBS MEMORANDUM

FROM: Robert D. Wood

TO: CTN-HOLLYWOOD SUPERVISORY PERSONNEL

DATE: March 28, 1973

Re: *Writers Guild Negotiations*

As you probably know, CBS has been engaged for several weeks in collective bargaining negotiations with the Writers Guild of America in an effort to arrive at a new film agreement. We earnestly hope that we can arrive at a fair settlement. However, the Guild once again is making improper demands to expand their jurisdiction to cover the employment of producers, associate and assistant producers, and other executives and supervisory employees under these agreements.

I am most concerned about other courses of action recently taken by the Guild. The Guild has threatened that if you are a member of the Guild, whether active or inactive, associated, withdrawn or suspended, whether or not in good standing, in the event a strike is called by the Guild and a picket line established and you cross such picket line to render your supervisory services for CBS, the Guild will fine you and have you blacklisted. It is the opinion of our counsel that the imposition of such fines would constitute a violation of the National Labor Relations Act and would be unenforceable, and that such threats of blacklisting are unlawful and such blacklisting would be unenforceable.

In 1970 we filed charges with the National Labor Relations Board concerning similar Guild threats. At that time the Regional Director of the Board advised us and the Guild that such threatened action was illegal. We are prepared to again file charges if the need arises.

In the event of a strike and/or the establishment of any picket line, we will expect you to continue to perform

as a member of our management team and continue to report for work. If you are a member of the Writers Guild, such membership will not relieve you of your supervisory obligations to us but should the Guild attempt to fine you for performing your supervisory obligations to us and institute proceedings to impose such fines, CBS will provide you with defense to any such proceedings at our cost and will indemnify you against any such fines imposed in such proceedings.

You realize that CBS must and will preserve all of its legal rights and remedies if you are in breach of contract or otherwise fail to render your services as a supervisor.

We undertake this course of action with regret, but we simply must fulfill our contractual and moral obligations.

R.D.W.

LOS ANGELES TIMES
June 27, 1973
Part I, p. 3

Writers Guild Fines, Expels 5 Who Crossed Picket Lines

BY JOHN DREYFUSS
Times Staff Writer

Five members of the Writers Guild who crossed picket lines during a recent strike have been expelled from the union and fined a total of $127,100, guild spokesmen said Tuesday.

All five said they are producers and crossed the lines in order to do production work. They said they did no writing during the 16-week strike that ended Sunday.

"This is a jurisdictional dispute," said Jon Epstein, producer of Owen Marshall, who was fined $2,000. "The guild feels it represents any member no matter what he is doing."

The five producers said their studios had told them to continue production work, and had promised to fight any guild fines in court and to make restitution if the fines were upheld.

The National Labor Relations Board is currently reviewing the question of whether the Writers Guild can legally prevent its members from crossing picket lines if those members also belong to another union.

All five expelled guild members are also in the Assn. of Motion Pictures and Television Producers.

Besides Epstein, those expelled and fined were:

—David Victor, executive producer of Griff, Marcus Welby, M.D. and Owen Marshall. He was fined $50,000.

—John Mantley, executive producer of Gunsmoke, was fined $50,000.

—Robert Blees, executive story consultant on Barnaby Jones, was fined $25,000. Blees said his title included the duties of associate producer.

—Herman Saunders, executive producer of Adam 12, was fined $100.

The fines were based on the length of guild membership, amount of writing accomplished, income, and "various other factors," a guild spokesman said.

He said that if any of the five who

Please Turn to Page 13, Col. 1

GUILD

Continued from Third Page

were fined refused to pay, the guild would go to court in an effort to get the money.

Epstein said that "many, many more" producers who are guild members crossed picket lines than those who were fined. He estimated the number at between 30 and 70.

More fines and expulsions of writer-producers are expected, but the number is not expected to approach 30.

The guild's trial committee found the five producers guilty of union infraction. The organization's board of directors affirmed the findings and voted to levy the fines.

BEST COPY AVAILABLE

G. C. Exhibit 31

DAILY VARIETY
June 27, 1973
Page 1

WGA FINES, OUSTS 5 HYPHENATES

50G Slapped On Mantley, Victor; 25G Fer Blees; Some Say They Won't Pay

By DAVE KAUFMAN

Writers Guild of America has taken drastic action against five hyphenates accused of violating strike rules, imposing fines ranging from $100 to $50,000 on the members so charged, and expelling all of them. There are other cases before the Guild, which were not mentioned, and WGA said verdicts on those aren't all in yet. Board has affirmed findings on the five by the trial committee and voted penalties.

The strike ended Sunday when writers voted ratification of four-year contract with Association of Motion Picture & TV Producers.

All of the hyphenates disciplined said WGA hadn't told them of the actions, that the first they knew about it was when contacted for comment by Daily Variety. Some pointed out WGA West prez John Furia Jr. Sunday had told membership names and fines would be released only after individuals involved were told about it first.

Top Penalties

Severest penalties were slapped against John Mantley, exec producer of "Gunsmoke" on CBS-TV, and David Victor, exec producer of "Marcus Welby, M.D." and "Owen Marshall," both on ABC-TV. Each

(Continued on Page 6, Column 1)

G.C. Exhibit 32

WGA FINES, OUSTS 5 HYPHENATES; SOME SAY THEY WON'T PAY UP

(Continued from Page 1, Column 5)

man was fined $50,000. Mantley declined immediate comment.

Victor said, "I'm upset, but I'm not surprised. I did cross the picket lines. I am an officer of a sister guild (I was just reelected treasurer of Producers Guild of America), and I was performing services as a producer. This is a jurisdictional fight which shouldn't be settled by bad words and disciplinary hearings of this sort, but should be settled once and for all in court. I personally don't expect to pay the fine. I always felt the studio would. Universal had said it would indemnify."

Robert Blees was fined $25,000; Jon Epstein, $2,000; and Herman Saunders, $100. Acquitted was Gene Stephen Taft, a recording exec, and one other the Guild did not identify, but reportedly a trailer department employe at MCA.

Some Not Mentioned

Not named in the release were other hyphenates such as Jack Webb, Cy Chermak, Michael Crichton and Peter Bogdanovich, all previously mentioned as being before the Guild disciplinary committee.

Mantley was charged with having crossed the picket lines at Studio Center in April to work for CBS, a struck company. He did not attend the hearing, was repped by counsel. He and others involved are ordered to pay fines by Aug. 1.

Victor was charged with having crossed picket lines in April for purpose of working for Universal, a then-struck company. He also didn't attend the hearing, was repped by counsel.

Epstein was charged with having crossed U picket lines in April to work for the then-struck company. He also didn't attend meeting at which his case was aired, was repped by counsel.

Epstein 'Not Surprised'

Epstein commented, "I'm not surprised. After all, the hearing was held with the judges the accusers. In the Guild's April statement it said I was guilty. It is absolutely correct, so I am not surprised at its position, it is obvious. But I did not render services as a writer, and this is the key to the whole thing. We are being discriminated against, and I find it ridiculous.

"If I wrote 10 years ago and worked as a waiter at Universal, I would be subject to exactly the same disciplinary measures. I don't know if I will pay the fine. In my opinion, the studio will be studying the matter, since we are indemnified. They could bring me into court if they want to, but I feel this is discriminatory since scores of hyphenates crossed the picket lines."

Blees was charged with crossing a Guild picket line March 6—the day the strike began—to work for QM Prods., at that time on the struck list. He didn't attend the hearing, was repped by counsel. At the time of the alleged violation, he was story ed on QM's "Barnaby Jones." Blees declined to comment until officially notified by WGA.

Saunders, exec producer of "Adam-12," was accused of having crossed U picket lines in April to work for a then-struck company, and he, too, was repped by counsel in his absence at the hearings. He had no comment yesterday.

WGA said all members found guilty may appeal the disciplinary action to the membership of the Guild at its next annual meeting in May. Notice of appeal must be filed with the Guild within 30 days. Pending the appeal the member involved has none of the rights and privileges of membership.

THE HOLLYWOOD REPORTER
June 27, 1973
Page 1

WGA OUSTS FIVE; FINES MOUNT UP TO $127,000

By Will Tusher

Five hyphenate members of the Writers Guild of America, West, were fined and expelled from the union yesterday for violation of strike rules. The announcement came as a post-strike bombshell and dashed hopes that had arisen in some quarters that the WGA would mete out amnesty instead of punishment.

Two men, John Mantley, executive producer of CBS' "Gunsmoke," and David Victor, executive producer of three Universal shows — "Grill," "Marcus Welby, M.D." and "Owen Marshall" — were fined $50,000 each plus hearing costs.

Robert Blees, story editor of Quinn Martin Productions' "Barnaby Jones," was fined $25,000 plus hearing costs. Jon Epstein, producer of "Owen Marshall," was fined $2,000 and costs. Herman Saunders, executive producer of "Adam-12" at Universal," was fined the smallest sum, $100 and costs.

All expulsions but Victor's are effective immediately. Victor's becomes effective 90 days after strike termination. All fines are payable no later than Aug. 1. All were found guilty of crossing WGA picket lines during the strike. The verdicts were rendered by the guild trial committee and affirmed by the WGA board which levied the penalties. They were given 30 days to appeal. Appeal is permissible also at the next annual meeting in May.

Mantley and Saunders declined immediate comment, although Saunders said the verdict was no surprise. Most bitter reaction came from Epstein, who predicted the fines and expulsions would be reversed in the Association of Motion Picture and Television Producers complain' awaiting a ruling by the regional National Labor Relations Board. The guild is on record stating that if the NLRB finds against it, an appeal will be carried to the U.S. Supreme Court if necessary.

Epstein scored the WGA for refusing to consider extenuating circumstances.

(Continued on Page 13)

WGA Expels Five Hyphenates —

(Continued from Page 1)

He said the issue was one of jurisdiction, not of strike breaking, and he noted sardonically that the WGA had failed to move against hyphenate film editors and directors who also had crossed writer picket lines.

"I believe they have no right to discipline me in another job," he declared. "I was not here crossing a picket line as a writer. I did not write. I did not scab their strike. I would not scab their strike."

He noted that Universal had promised to indemnify hyphenates who reported to work, and said he assumed the fine, if upheld, would be paid by the studio. He took the view that an appeal would be pointless.

"At the moment," Epstein observed wryly, "I see the directors among the missing. I'm not looking to make a problem for other people if the Writers Guild chooses to use us as examples, not discipline the director hyphenates. That, I suppose, is their business. But it is a fact that all the same charges were leveled at all the directors, and I'm perfectly convinced it's within the directors' rights to direct, just as it was within my rights to come to work and dub my pilot, and do everything else I've done in a non-writing capacity."

A WGA spokesman, meanwhile, scoffed at reports that some dissident guild members were threatening to form of a rival writers' union.

"I don't think there's any possibility of forming a new union if for no other reason than that would be dual unionism," he said. "There's a clearcut situation here where the only way the guild can be challenged is within the union."

The same guild representative, a top WGA official, had a dubious response to the declaration by the new Writer Producer Caucus, of which Mantley is a founder, that it intends to resist the locked-in minority status of producer hyphenates.

"I think within the guild there are all kinds of disparate groups representing different phases of work," the WGA spokesman asserted, "and I think the union is meant to be a combination of separate strengths. If you divide those strengths you weaken each one individually."

A spokesman for Loeb and Loeb, law firm representing the AMPTP in the NLRB complaint, said the guild action was consistent with the strike settlement, but pointed out that the producers association also has reserved the right to continue with the unfair labor practice charges, which have not been dismissed.

While Epstein admitted that he crossed a picket line at a struck company, the AMPTP attorney maintained there was not a general concession that all accused hyphenates had done the same.

"There was a factual question in some of those cases," he said.

Victor, too, conceded crossing the picket line, but held the issue really was a jurisdictional one, inasmuch as he said he performed producing duties only. He stated the jurisdictional question was compounded in his case since he also is treasurer of the Producers Guild. Like Epstein, he noted that the studio had agreed to indemnify him in event of such disciplinary measures by the guild.

"The next step," he said, "is theirs."

None of the five expelled guild members attended the trial hearings, but all were represented by counsel.

G.C. Exhibit 33

THE Hollywood REPORTER

Vol. CCXXVI, No. 16 Hollywood, California, Thursday, May 10, 1973 Price 15

WGA REPEALS BLACKLIST RULE AS BOTH SIDES INSIST STRIKE ACCORD MOMENTUM NOT LOST

By Will Tusher

In what is seen in part as an effort to blunt pending National Labor Relations Board charges by the Association of Motion Picture and Television Producers, strike rule 30—the so-called blacklist rule—has been repealed by the board of directors of Writers Guild of America, West.

Another hopeful strike development came yesterday as spokesmen for the WGA and the AMPTP found a new area of agreement in separate statements calling for an end to speculation on how long it will take to finalize an accord. Both reaffirmed belief that the negotiations have decided an conclusive stage.

The decision to rescind strike rule 30—taken by the board April 30—was revealed yesterday in a letter by WGA president Ranald MacDougall to the membership. Under the abrogated rule, members were forbidden to work with anyone suspended or disciplined for violation of strike rules.

New charges — or amendments to previous complaints — are known to have been prepared by the AMPTP as an aftermath of an earlier guild statement (Hollywood Reporter 4/16/73) announcing trial dates for eight hyphenates accused of crossing picket lines.

"Those convicted," the WGA then declared, "will appear on a 'roll of dishonor' and be listed in guild publications in perpetuity so that guild members for years to come will never forget. A guild spokesman characterized those members guilty of scabbing as 'pariahs who have betrayed their colleagues.'"

A guild official who participated in the board revocation of rule 30 said yesterday he was not certain whether plans for the roll of dishonor would be abandoned in view of the action to avoid the appearance of blacklisting.

"What it does affect," he noted, "is the rule itself which would make it mandatory, and that, of course, was what the letter (MacDougall's) was about."

Meanwhile, a report of massive strike-related layoffs at Universal, with the casting department assertedly hardest hit, met with terse denial from Sid Sheinberg, president of Universal Television. He said any dismissals at the studio would be "seasonal in nature" because of shows which would be normally out of production at this time of the year. He indicated that even those job casualties would be back at work in a month or so when "a number of shows" are targeted to go back into production. He insisted no permanent employees have been laid off because of the writers' strike.

"Not only is that not true," Sheinberg declared. "We haven't laid off,

(Continued on Page 13)

RESPONDENT'S EXHIBIT No. 11

587

WGA Repeals Blacklist Rule —

(Continued from Page 1)

to the best of my knowledge—and bear in mind I could be in error—a secretary of a hyphenate or writer who is not at work."

A call by a WGA spokesman for a moratorium on second guessing the negotiations was matched with an echoing observation by Sheinberg.

"There are people working very hary to bring this to a conclusion," he state, "and I think we're in a phase right now where the less that people say and the more they try to get done, the better off we're all going to be."

A high WGA official who himself has voiced and reaffirmed optimism, albeit open ended, yesterday persisted in his assertion that nothing has occurred either over the weekend or in recent days to diminish prospects of an early, if not time pinpointed settlement.

"I think all this speculation about (negotiations being) promising or unpromising within a certain period of time doesn't make a hell of a lot of sense," he declared. "I said . . . the other day what I feel, and I continue to feel it—that I think it's optimistic. I think that when two sides are talking—and they are talking about the issues—that that's an optimistic sign. When it's pessimistic is when you're not talking, or when you're not discussing the issues."

MacDougall, in his letter on revocation of rule 30, stressed that the move did not represent a softening of guild determination to discipline members who fail to discharge strike obligations. He pledged that strike violators would be prosecuted "as vigorously as the law and good union principles permit."

"Because the old rule could be misconstrued to mean that the guild was maintaining an improper sanction, a matter of anathema to this guild," he declared, "the board . . . rescinded old rule 30. . . . This action was taken voluntarily, in the belief that disciplinary measures remain available to the membership, and trial committees."

He listed those as fines, expulsion and "other sanctions."

However, MacDougall expressed "the conviction that even in pursuit of strike discipline, members of this guild do not wish to be part of an action which carries the odious implications of a 'blacklist.'"

The new rule 30 empowers the board to delegate enforcement of the 29 standing strike rules to such committees as it may wish.

Intensive offshoot meetings — described as "sideborring" — continued yesterday between the WGA and the AMPTP. The WGA spokesman insisted there was no suspension or breakdown of talks Monday, as reported elsewhere. Discussions have been sustained without a day's respite since their resumption Tuesday, May 1, he said.

As discussions with AMPTP went on, the WGA signed 11 more companies to its independent agreement, bringing the steadily soaring total to 126. One of the signatories, Sheldon Leonard Productions, is the eighth AMPTP member to break ranks.

Latest companies to come aboard are two more Sheldon Leonard firms, Sheldon Leonard Enterprises and Franshell Productions; Jerome Hellman Productions and Locust Productions, both owned by Hellman; Viacom's VSC Enterprises, headed by Willard Black and Richard S. Reisberg; Albert Band and Associates; Joel Freeman Productions; Charles E. Sellier Jr.'s Cava Films; Andrew L. Stone Inc.; and Certified Equities Productions, headed by Victor Meschure. **—Will Tusher**

October 26, 1973

REMINDER OF SPECIAL MEMBERSHIP MEETING

DATE: Monday, November 12, 1973

PLACE: BEVERLY HILTON HOTEL (Grand Ballroom)

TIME: 8:00 p.m.

AGENDA: Disciplinary Matters - Appeals to the Membership

The appeals of the following members in the order listed will be heard.

MEMBER	RULE(S) FOUND VIOLATED	DISCIPLINE IMPOSED
Robert Blees	Strike Rules 12 & 13	Expelled and fined $25,000 plus the costs of the hearing.
Jon Epstein	Strike Order and Strike Rules 1, 12 & 13	Expelled and fined $2,000 plus the costs of the hearing.
John Mantley	Strike Order and Strike Rules 1, 12 & 13	Expelled and fined $50,000 plus the costs of the hearing.
Herman Saunders	Strike Order and Strike Rules 1, 12 & 13	Expelled and fined $100 plus the costs of the hearing.
David Victor	Strike Order and Strike Rules 1, 12 & 13	Expelled and fined $50,000.
Hugh Benson	Strike Rule 12.	Suspended for a period of 2 years and fined $100 plus the costs of the hearing.
Robert Cinader	Strike Order and Strike Rules 1, 12 & 13	Suspended for a period of 3 years and fined $5,000 plus the costs of the hearing.
Barry Crane	Strike Order and Strike Rules 1, 12 & 13	Expelled and fined $10,000 plus the costs of the hearing.
David Levinson	Strike Order and Strike Rules 1, 12 & 13	Suspended for a period of 2 years and fined $10,000 plus the costs of the hearing.
Cy Chermak	Strike Order and Strike Rules 1, 12 & 13	Suspended for a period of 2 years and fined $7,500 plus the costs of the hearing.

589

Resp. Exhibit 12

October 26, 1973

FORMS OF DISCIPLINE

THEIR LIMITS AND EFFECTS

Article X of the Guild's Constitution and By-Laws provides:

> Any member of the Guild who shall be found guilty, after a hearing conducted in accordance with the procedures herein prescribed...may be suspended, declared not in good standing, expelled from membership in the Guild, be asked to resign or in lieu thereof, or in addition thereto, he may be censured, fined or otherwise disciplined. (Emphasis added.)

A brief explanation of these terms is as follows:

EXPULSION. Expulsion is generally considered the severest form of union discipline. It strips the individual, for an indefinite period of time, of all rights enjoyed exclusively as a member of the Guild. An individual who has been expelled from membership in the Guild would not have the right to vote on any Guild matters, attend membership meetings, receive Guild mailings, participate on Guild committees, hold or run for office in the Guild, or participate in the Credit Union (unless he is already a member in which case membership in the Credit Union will continue to be extended to him). There is obviously a stigma attached to expulsion which might cause individual members of the Guild to refrain from working with such a person. The Guild itself cannot order its members to refrain from working with an individual merely because he has been expelled. Moreover, the Guild cannot prevent an expelled individual from working in any capacity, including that of a writer. Although the Guild has in its collective bargaining agreements what is generally called a "union security clause" which requires union membership after a period of 30 days, the federal law prohibits a union to cause or attempt to cause an employer to terminate an employee for any reason other than his failure to tender periodic dues and initiation fees. Thus an expelled individual may continue to work as a writer, even for signatory companies. He will not pay dues to the Guild or necessarily comply with its rules or regulations. His employment must be at least at the minimums set forth in the collective bargaining agreement, as he is entitled to benefits and protections of the collective bargaining agreements, i. e., minimums, residuals, credits, pension, health and welfare, and grievance and arbitration.

If the expelled individual desired to regain membership in the Guild he would have to reapply and such application could be accepted or rejected by the Board of Directors.

SUSPENSION. Suspension is generally considered a less severe form of union discipline. It has the same effects as expulsion, explained above, except that it

(see over)

is for a definite period of time, i.e., 6 months, 1 year, 2 years, etc. Once the period of time has lapsed the individual may remain a non-member of the Guild without the obligation to pay dues or to comply with the Guild's rules and regulations as long as he does not perform work within the Guild's jurisdiction. However, as soon as he resumes writing for a signatory company he must comply with the "union shop" provisions ("union security clause") of the collective bargaining agreement and rejoin the Guild. If he fails to tender his dues the Guild may require the employer to terminate the individual (at least with respect to his writing services).

FINES. Fine is a recognized form of union discipline although there are sometimes certain problems associated with it, particularly in their collection. Fines levied by a union may be legally enforceable in a court of law provided the individual has been accorded a fair and impartial hearing and has not otherwise been denied due process of law. Their collection can be a costly and lengthy process. Courts sometimes prefer expulsion or suspension as a method of union discipline.

A major question considered by the courts is the reasonableness of the fine. The law is not definite as to what constitutes a reasonable fine, the National Labor Relations Board and the courts having bandied the issue back and forth for the last few years. It now appears that the U. S. Supreme Court has decided that the issue of reasonableness if one for the courts to decide and not the National Labor Relations Board. Courts may be harsher in this matter than the Board would have been.

CENSURE. Censure is an official reprimand, has no effect upon a person's Guild membership.

DECLARED NOT IN GOOD STANDING. This is a form used by the membership department to advise a member of his impending suspension for failure to pay dues. Actually this has no effect on his membership status unless within a prescribed period of time he fails to tender his dues in which case he will be suspended. Thus, the real discipline is suspension.

RESIGNATION. The request for resignation may be coupled with the threat to expel from membership, but in such a case the actual form of the discipline is expulsion and not resignation. A request that a member resign would be somewhat equivalent to Censure. Whether the member then does resign would be a matter for his conscience.

October 26, 1973

PROCEDURAL RULES FOR SPECIAL MEMBERSHIP MEETING

NOVEMBER 12, 1973

The Board of Directors has adopted the following rules to govern procedure relating to appeals of disciplinary matters:

1) The Executive Director for the Board will request the Chairmen and members of all Trial Committees who heard cases of the appellants to attend the meeting. The absence of any of these shall not, however, delay or affect the appeal.

2) Copies of the Findings of the Trial Committee and Decision and Order of the Board of Directors as to each appellant will be distributed to the members in attendance.

3) The Executive Director or a member of the Board will read the Findings, etc. as to each appellant before his case is heard. The Board has determined the order of cases to be heard in accordance with their dates of appeal, and alphabetically therein.

4) Each appellant shall be allowed 10 minutes for the presentation of his appeal, which may be given in person or by a Current member or members in good standing of the Guild on his behalf. A member of the Trial Committee or the Resident Counsel of the Guild may respond as to factual matters, but not in excess of five minutes.

5) Twenty minutes shall then be allowed for discussion by members of each case with each member limited to 2 minutes of speaking time.

6) The appellant or his spokesman may, if he so desires, close the discussion with a presentation not longer than 5 minutes.

7) Method of Voting will be be by secret written ballot containing specific alternatives. Current members in good standing may vote. Appellants may also vote (including appellants in other pending cases). Members of the Trial Committee which heard appellant's case and members of the Board of Directors will not vote. Ballots will of necessity have to be tallied after the meeting and the results will be mailed to the membership. The Constitution provides that a majority vote of the Current members in good standing attending such meeting shall be sufficient to reverse either the findings of the Committee or the Board or to reduce the discipline imposed.

542

Resp 12

November 12, 1973

BALLOT

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IN THE CASE OF APPELLANT JOHN DOE

THE DECISION AND ORDER OF THE BOARD IS:

EXPULSION from membership in the Guild.
Fine in the amount of $30,000.00
Costs of the hearing.

I. IMPORTANT - VOTE FOR ONE ONLY

A. AFFIRM ☐ B. REVERSE ☐ C. REDUCE DISCIPLINE ☐

Note: The Constitution provides: a majority vote of the Current members of the Guild in good standing in attendance at the meeting shall be sufficient to reverse either the Findings of the Committee or to reduce the discipline imposed.

If the vote for reversal is not a majority, the votes for reversal will be counted (together with votes which are to reduce the discipline but not reverse) as votes to reduce the discipline in entirety, i.e., no fine or other penalty.

II. COMPLETE ONLY IF YOU VOTED FOR "C" ABOVE.

A statistical average of the figures voted in 1. below will be binding upon the Board of Directors in reducing the discipline imposed, if there is a majority voting for reverse and reduce discipline.

I PROPOSE THAT THE DISCIPLINE BE REDUCED IN THE FOLLOWING MANNER:

1. Fine and Costs of Hearing

(a) ☐ Reduce fine to $20,000

(b) ☐ Reduce fine to $15,000

(c) ☐ Reduce fine to $10,000

(d) ☐ Reduce fine to $ 5,000

(e) ☐ Impose no fine

(f) ☐ Other _____

(g) ☐ Costs of hearing only

(h) ☐ No costs of hearing

2. Expulsion, Suspension or Censure

(a) ☐ Expulsion to Suspension for _____years.

(b) ☐ Suspension for ___years.

(c) ☐ Censure only

(d) ☐ No expulsion, suspension or censure.

(e) ☐ Asked to resign.

3. ☐ No penalty.

Resp 12

WRITERS GUILD OF AMERICA, west, Inc.

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

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November 26, 1973

Dear Member:

On November 12, 1973 a meeting was held at the request of nine members who had been disciplined by the Guild for violation of Strike Rules. The sole purpose of the meeting was to present the appeals of these members and to have them acted upon by direct vote of the membership.

This right of appeal and the procedure for it is spelled out in the Guild Constitution (pages 29-30, Section 9 of Article X B). It follows upon the complex and ongoing disciplinary procedures, also outlined in our Constitution, which involve the following.

1) Investigation and detailed presentation of a case by the Disciplinary Committee.

2) Filing of charges by the Board of Directors and referral to one of several Trial Committees.

3) Trial Committee hearing at which the accused is entitled to Counsel, cross examination of witnesses, etc. The Trial Committee prepares its finding, makes a determination of Guilt or Innocence and recommends penalties.

4) The Board of Directors reviews these findings and recommendations and renders a final decision.

The ultimate step, at the option of the individual, is an appeal to the general membership.

I detail these steps that you may be reminded of the serious and

(over)

Resp Exhibit 15

thorough conduct of these proceedings and of the dilligent effort in behalf of the membership, while vigorously safeguarding the rights of the individual.

At the membership meeting the first four appeals were presented (Robert Blees, Jon Epstein, John Mantley, Herman Saunders). A secret, written ballot was voted by the current members attending. Besides affirmation of the Board's final action, it offered a series of choices: Reversal; Reduction of fines in five diminishing steps; Options for expulsion, suspension, censure or none of those penalties; a blank for any option not adequately foreseen by the above.

The enclosed sheets show the complete results of that vote. For the appellants who presented their cases fully, (Robert Blees, Jon Epstein, John Mantley, Herman Saunders) these results thus become the final disciplinary action of this Guild.

You will also find the tally on the appeals which were <u>not</u> fully presented, but on which many members voted because of a numbe of general statements made and views expressed which applied .. all. (David Victor, Hugh Benson, Robert Cinader, Barry Crane, David Levinson). As it was quite late, I ruled as Chairman at that meeting, that these votes would be tabulated and announced. In the interests of fairness, I also ruled that any of these latter five cases would have their disciplines reversed if a majority so voted. This, as you can see, was not the result.

At it's meeting last Tuesday, November 20, 1973, the Board of Directors voted to reduce the fines in these latter five cases to the amounts indicated on the enclosed tally and to eliminate all other penalties provided that the individual member agrees that such fine would be deemed reduced as if an appeal had been fully heard and concluded; in the event any individual member does not so agree then the fines and penalties heretofore imposed would stand and another meeting would be set at which such member's appeal to the membership would be heard.

I hope I have explained this complex matter satisfactorily. It is equally important to the Guild and to the individuals involved. I also wish to comment on the spirited yet orderly and dignified manner in which all members participated in this vital and democratic procedure. It is inevitable that individuals hold views widely divergent and passionately felt on this matter. It is a tribute to writers and their Guild that they can deal with this fairly, intelligently and democratically.

John Furia, Jr.
President

TABULATION OF VOTES CAST AT MEMBERSHIP MEETING - NOVEMBER 12, 1973

APPELLANT	TOTAL BALLOTS	AFFIRM	REVERSE	REDUCE	TOTAL REDUCE[1/]	MAJORITY[2/]	MAJORITY DECISION	FINE STATISTICAL AVERAGE[3/]	EXPULSI SUSPENSI CENSURE
Robert Blees	216	73	87	56	143	123	yes	$2,493.25	none
Jon Epstein	218	92	94	32	126	122	yes	200.22	none
John Mantley	214	76	90	48	138	122	yes	3,883.48	none
:rman Saunders	211	83	102	26	128	122	yes	23.48	none
David Victor	197	76	86	35	121	123	no	3,521.50	none
Hugh Benson	193	81	90	22	112	122	no	19.79	none
Robert Cinader	196	81	88	27	115	123	no	179.40	none
Barry Crane	193	75	87	31	118	123	no	469.70	none
David Levinson	192	74	88	30	118	123	no	622.98	none

1/ Total for reduction was arrived at by combining reversal votes (as reducing to no fine and no penalty) with votes for various reductions.

2/ See attached sheet for explanation on the computation of majority

3/ Computed as indicated in footnote 1 by including votes for reversal as being for no fine.

4/ Votes for reversal were combined with those for reduction and treated as votes for reduction without penalty. A majority of all such votes cast were against imposing penalties of expulsion, suspension or censure.

/Over.....

COMPUTATION OF MAJORITY

The majority was determined in each case by taking the total number of Current members in good standing in attendance at the meeting and subtracting from that figure the number of persons from the Board of Directors who were included in the total, the number of persons present from the Trial Committee in each case, and the number of void ballots cast in each case.

APPELLANT	CURRENT MEMBERS IN ATTENDANCE	MEMBERS OF BOARD OF DIRECTORS	MEMBERS OF TRIAL COMMITTEE	NUMBER OF VOID BALLOTS	MAJORITY
Robert Blees	261	13	4	0	123
Jon Epstein	261	13	5	0	122
John Mantley	261	13	4	1	122
Herman Saunders	261	13	4	1	122
David Victor	261	13	4	0	123
[illegible]h Benson	261	13	4	1	122
[illegible]t Cinader	261	13	4	0	123
Barry Crane	261	13	3	0	123
David Levinson	261	13	3	1	123

WRITERS GUILD OF AMERICA, west, Inc.

Affiliated with the Writers Guild of America, east, Inc.

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JOHN J. FURIA, JR.
President
FAY KANIN
Vice-President
WILLIAM LUDWIG
Secretary-Treasurer

•

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JAMES BONNET
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HELYNE LANDRES
Membership
LOIS McGUIRE
Administration
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MARGE M. WHITE
Credits

•

ALLEN RIVKIN
Public Relations

December 7, 1973

Dear Member:

As you know, there are unfair labor practice charges against the Guild now pending before the National Labor Relations Board. These charges involve the Guild's right to discipline supervisory employees (i. e. executive producers, producers, associate producers, directors and story editors). We believe that we have the right to discipline supervisors, an action which the membership previously affirmed, but the issue is one which ultimately must be decided by the courts.

The Board of Directors has decided that the best interest of the Guild will be served by proceeding as we have in the past in all of these cases unless the individual member agrees to waive the statute of limitations or laches as a defense. In this event the Board will delay further proceedings until a final decision is rendered by the courts on the unfair labor practice charges. Of course the Guild will proceed in any case where the individual member does not agree to waive the statute of limitation or defense of laches and thereby preserve the Guild's right to prosecute the case after a court decision.

While the Board's decision is an affirmation of its position in regard to the Guild's right to discipline its supervisory members, it recognizes and takes into consideration the following points:

1) In the recent appeals of supervisory employees to the membership, the membership eliminated any penalty of expulsion, suspension or censure, leaving only monetary fines. The Guild legal counsel has advised the Board that enforcement

(over)

548

Resp Exhibit 1c

via a law suit to collect fines in a state court, might be delayed until the NLRB charges against the Guild have been determined.

2) Guild legal expenses which are already substantial will not needlessly be expended by litigation at this time.

There may be some members who elect to file a law suit of their own against the Guild. In this case, we will of course offer a vigorous legal defense.

The foregoing points have no application to any other charges of discipline which involve non-supervisory personnel. We will continue to pursue these other disciplinary matters without delay.

Sincerely,

John Furia, Jr.
President

JF:meh

ADAMS, RAY & ROSENBERG
9220 Sunset Boulevard, Los Angeles, California 90069 · Telephone CRestview 8-3000
LITERARY AGENTS

November 15, 1972

Miss Billie Gold
Billie Gold & Associates
9595 Wilshire Boulevard
Suite 706
Beverly Hills, California 90212

Dear Billie:

I have briefly outlined below the conditions under which QM has employed ROBERT BLEES in the capacity of Executive Story Consultant on PARRISH. If you have any comments, please communicate same to me immediately. If I haven't heard from you by mid-week, I'll forward the following information to Mr. Blees for his files.

1. Blees will commence services as of today, November 15, 1972 and will be guaranteed employment for a period of not less than 22 [consecutive] weeks at a rate of $1,250 per week. Thus, the initial compensation guarantee is $27,500.

2. QM agrees to notify Blees not later than April 1, 1973 (plus three business days) of its exercise (or non-exercise) of an option described in the next following paragraphs.

   a. In the event the network requires an extension, QM will have up to April 16, 1973 within which to notify Blees of the exercise of its option.

   b. In any event, if QM exercises its option, Blees services must commence not later than May 1, 1973.

continued....

550

Respondent's Exhibit 17

c. In the event QM exercises the option described above, Blees will be guaranteed employment for 44 ~~[consecutive]~~ weeks out of 52 weeks at a rate of $1,250 per week, the compensation guarantee is $55,000.

OK per LR 11/21/72

(1) QM will have the right to extend ~~[on a week-to-week basis]~~ after the 44th week for the completion of Blees' services.

OK per LR 11/21/72

OK per LR 11/28/72

Guaranteed

consecutive

3. QM will have four annual additional options to guarantee Blees employment of 44 out of 52 weeks. The first option pickup date shall be not later than April 1, 1974 (plus three business days) and services must commence not later than May 1, 1974.

OK per LR 11/21/72

with QM's same right to extend for each such period of employment.

a. Pickup dates and the outside dates for commencement of services for each subsequent optional year will be the same.

b. Blees' compensation will increase in each of the four optional years by $150 per week. (Thus, the first optional year he will receive $1,400 per week; the second optional year $1,550 per week; etc.)

4. QM will contribute 5% of the weekly compensation to the pension fund and QM will provide the normal health and welfare payments. Such contributions will not exceed WGA maximum.

OK per LR 11/21/72

5. Credit will be accorded Blees on a separate card in the end titles as Executive Story Consultant.

7. Any scripts which Mr. Blees may write will be compensated for at "top of the show" and such compensation will be in addition to his weekly salary.

Very sincerely,

LEE ROSENBERG

LR:br

November 30, 1972

Mr. Lee Rosenberg
Adams, Ray & Rosenberg
9229 Sunset Boulevard
Los Angeles, California 90069

Re: CAI Productions -
Robert Blees

Dear Lee:

In accordance with our recent telephone conversations, following are the changes to which we have agreed in connection with your letter to me of November 15, 1972 regarding the services of Robert Blees as Executive Story Consultant on the series tentatively entitled "Parrish":

Item 1 -
CAI will also have the right to extend this initial period in order for Mr. Blees to complete his services for the mid-season network order. However, he will not be required to render services beyond May 1, 1973.

In the fourth line, the word "consecutive" is to be deleted.

Item 2 c. -
In the third line, the word "consecutive" will be deleted.

Item 2 c. (1) -
In the second line, the words "on a week-to-week basis" will be deleted, and in the third line, the word "guaranteed" will be added after "44th".

Item 3 -
In the first line, the word "consecutive" will follow the word "four". In the third line, we will see that QM has the same right to extend each such period of employment.

Item 4 -
We have agreed that QM's contributions will not exceed WGA maximum contributions.

Best regards.

Sincerely,

BILLIE GOLD

BG:m
cc: Mr. Quinn Martin
Mr. Howard Alston
Mr. Gerald Wilson
Merrill H. Karpf, Esq.

THE HOLLYWOOD REPORTER
Tuesday, November 27, 1973

ALL EXPULSIONS, SUSPENSIONS VETOED BY WGA

By Will Tusher

Six expulsions and three suspensions ordered for alleged strike violations were lifted yesterday as the Writers Guild of America, W. made public results of complicated balloting at the Nov. 12 meeting where the nine disciplined producer-writer hyphenates appealed their convictions to the membership.

Coincidentally, the vote called for a drastic reduction of fines ranging from $100 to $50,000.

The show of sentiment for amnesty is widely regarded as a rebuke both to the WGA board and the trial committees — and conceivably could sharply affect the guild's future course in pending NLRB and potential court action where the WGA has been determined to affirm its claimed jurisdiction over hyphenates even when they are not performing writing functions during a strike.

(Story on mixed reactions to the WGA verdicts on Page 17)

Membership reversal of the sentences meted out for crossing picket lines is attributed largely to sympathy, expressed at the appeals meeting, with the common claim of all appellants that they did not act inimicably to WGA interests inasmuch as they assertedly did not do any writing while fulfilling contractual producer duties.

In a surprisingly small vote turnout, the WGA rank-and-file set aside the expulsions of John Mantley, David Victor, Robert Blees, Jon Epstein, Herman Saunders and Barry Crane, and the suspensions of Hugh Benson, Robert Cinader and David Levinson.

Mantley's $50,000 fine was reduced to $3,883.48; Victor's $50,000 levy cut to $3,521.50; Blee's $25,000 fine lowered to $2,493.25; Crane's $10,000 fine scaled down to $69.70, and Levinson's $10,000 fine reduced to $822.98.

Cinader's $5,000 fine was rolled back to $179.40, Epstein's $2,000 to $200.22, Saunders' $100 penalty to $23.48, Benson's $100 fine to $19.79.

Highest number of ballots cast in any single case was that of the 218 on Epstein, a close call where 94 favored reversal, 92 favored affirmation and 32 voted for reduction of penalties.

However, votes for reversal and reduction were combined and tallied as votes for reduction without penalty. In all cases, the majority ruled against imposition of penalties of expulsion, suspension or censure.

The reduced fines against Blees, Epstein, Mantley and Saunders represent final verdicts not subject to further appeal because these four presented their cases in full at the Nov. 12 meeting. The remaining five, whose cases were not fully heard, have the right to appeal the revised verdicts at another membership meeting if they do not acquiesce in the latest decisions.

Results were computed by the same means in all nine cases.

Meanwhile, the WGA disclosed that of 228 strike discipline cases processed to date, 10 more still are pending, and 20 more are yet to be adjudicated on the basis of reports from investigatory and disciplinary committees. One hundred twenty-eight cases have been dismissed, 31 tried, and 39 more are awaiting trial. Of the latter, 22 will be heard in November, December and January, while 14 are to be scheduled and three are to be rescheduled.

Eight dismissals were decreed administratively, 81 by the disciplinary committee, and 39 by the board of directors. There have been 13 guilty verdicts and seven final findings of innocence. One case was dismissed on motion at trial. One trial decision is being drafted, and another is pending before the board. Three are to be presented to the board by the trial committee. Three are awaiting trial committee recommendation, and three are pending before the trial committee.

Subsequent verdicts will be watched closely for evidence of the lenient attitude demonstrated by guild members in reversing all expulsions and suspensions, and sharply scaling down fines.

In a letter to WGA's membership accompanying the official vote tabulation guild president John J. Furia Jr., made no direct comment on the implications of the outcome.

"The ultimate step, at the option of the individual," he noted, "is an appeal to the general membership." He called attention, however, to "the serious and thorough conduct of these proceedings and of the diligent effort in behalf of the membership, while vigorously safeguarding the rights of the individual."

Furia obliquely rejected the view that the reversals constituted a vote of no confidence in the board and the trial committees.

"It is inevitable," he observed," that individuals hold views widely divergent and passionately felt on this matter. It is a tribute to writers and their guild that they can deal with this fairly, intelligently and democratically."

He also praised "the spirited, yet orderly and dignified manner" in which the appeals meeting was conducted. He described the appeals as a "vital and democratic procedure."

554

Resp Exhibit 18

DAILY VARIETY
Tuesday, November 27, 1973

PAGE 1

WGA Cuts Strike Fines, But Hyphenates Protest Payment Would Be Admission Of Guilt

By DAVE KAUFMAN

Hyphenate members of Writers Guild of America West, whose fines for crossing picket lines during last spring's strike have been drastically trimmed by membership, said yesterday that they still will not pay such fines, contending it is the principle, not the amount of the fine, which prevails.

Apprised of official Guild disclosure of massive reductions of fines, as well as rescinding of expulsions and suspensions which had been ordered by the Guild trial committees and board, majority of the hyphenates said this did not change their positions. Membership had taken the action at a Nov. 12 meeting at which four of the nine presented their cases. There wasn't time for the rest of the presentations.

Results are final in cases of Robert Blees, Jon Epstein, John Mantley and Herman Saunders.

WGAW prexy John Furia Jr. explained the other five would have had disciplinary judgments reversed had the majority so voted, but added this did not occur.

Five are David Victor, Hugh Benson, Robert Cinader, Barry Crane, David Levinson.

However, board last Tuesday (20) voted to reduce fines on the five cases to amounts indicated in vote and to eliminate all other penalties provided the individual member agrees that such fine would be deemed reduced as if an appeal had been fully heard and concluded. In event any member does not so agree then original fines and penalties would stand and another meeting would be set at which such member's appeal to the membership would be heard.

However, most hyphenates involved who were available for comment uniformly stated that they still objected to the assessments in principle, and would not pay.

Mantley's $50,000 fine plus expulsion was cut to $3833.48; Victor's $100,000 and expulsion to $3521.50; Benson's $100 and two-year suspension to $19.79; Crane's $10,000 and expulsion to $469.70. None of the expulsions or suspensions were sustained by members.

[illegible]

with acceptance of guilt, something he refuses to do. But the swingover of membership in its voting was "a major step in the right direction," he added.

'Nothing Has Changed'

Cinader, originally fined $5000 and given a three-year suspension, saw his fine reduced to $179.40, sans suspension, but declared as had Epstein, that the amount of the fine and nature of the punishment didn't change the principle involved. Guild thinks he is guilty, and he does not, said the producer-writer. Reduction of his fine is like "discounting a car," means nothing from the standpoint of principle, added Cinader. "My own inclination is that nothing has changed, but in view of the fact I am involved in this with other people, I wouldn't want to take an absolute position without consulting them," he said.

Cinader added his understanding is that when a case is on appeal, as is his, he can take the position he won't pay and the Guild would then have to go to court to seek collection.

"I don't know if the Guild is going to go to court. The initiative lies with it. If it chooses not to enforce this in court, I don't know what my legal recourse is so that I can get a legal adjudication of the issue. We are all indemnified anyway, so the amount is not impor-

[illegible]

555

RESP EXHIBIT 19

it's a step in the right direction, certainly in that they have removed expulsions and suspensions. But I will not pay any fine. I am indemnified by the network (CBS). I would be very surprised if it paid the fine, not that it's a significant amount, but it is the principle involved." Mantley said he was contacting his attorney regarding any possible litigation.

Blees, who initially had been fined $25,000 and expelled and whose fine is now reduced to $2493.25, sans expulsion, said he would not pay anything because of the principle involved.

Epstein, who originally was fined $2000 and expelled, commented he is indemnified by Universal, and it it wants to pay the reduced fine of $200.22 that's the studio's business. However, he added: "I feel even if a fine of $1 were paid it would indicate some acceptance, some responsibility of guilt, and I have none. I appreciate that cooler heads prevailed, without emotion, at the membership meeting, but I know what we did was moral and right. There is nothing like being a little less guilty."

Epstein said that in his view the membership vote indicated it was aware the Guild had "overstepped" in itsdisciplinary actions. He said he would like to put the whole matter "to bed," but added the amount of fine has nothing to do indicate it is in a very weak position. My position hasn't changed. I am almost inclined to pay its legal fees to go to court. We are under the impression the Guild doesn't have the right to get into this jurisdictional matter of writer-producer, that the Guild has no right to discipline us as producers."

Saunders, whose $100 fine and expulsion, was cut to $23.48, sans expulsion, commented, "I will not pay the fine. I feel it's an inequity. I don't understand the machinations of the Guild board or trial boards. I feel the fine is wrong regardless of the amount imposed."

Levinson, who had been fined $10,000 and given a two-year suspension and saw his fine reduced to $622.98, said he had heard "amnesty" mentioned, but was dead set against it because it implies wrongdoing, something he does not feel he did.

Benson remarked, "I'm most gratified it saw fit to lower the fines. The membership, I imagine, did this because it knew that we nine didn't write." He had no comment anent payment of the fine "until I discuss it with my attorney."

Total for reduction was arrived at by combining reversal votes (as reducing to no fine and no penalty) with votes for various reductions. Votes for reversal were combined with those for reduction and treated as votes for reduction sans penalty. A majority of all such votes cast were against imposing penalties of expulsion, suspension or censure.

THE HOLLYWOOD REPORTER
Friday, December 7, 1973

WGA ACTS TO POSTPONE HYPHENATE PROSECUTION

By Will Tusher

A dramatic olive branch was extended yesterday to supervisory employees among the 69 members of Writers Guild W. who still face trial and/or sentence for strike violation.

WGA's board of directors made a conditional offer to shelve intra-guild prosecution of all pending cases against hyphenates until a final court ruling — presumably by the U.S. Supreme Court — on unfair labor practices charges filed during the strike by the Assn. of Motion Picture and Television Producers over the guild's claimed right to discipline supervisory employees.

Final round of hearings on the National Labor Relations Board complaint upholding the AMPTP position begins at the Federal Building in Westwood Dec. 12 (Hollywood Reporter 11/28/73). Executive producers, producers, associate producers, directors and story editors are regarded by the WGA as supervisory employees.

Disciplinary action will be deferred against all accused hyphenates who agree to waive statute of limitations or laches (negligence or inordinate delay in processing charges) while a definitive court disposal is awaited.

"Of course," explained WGA president John J. Furia, in announcing the board's decision, "the guild will proceed in any case where the individual member does not agree to waive the statute of limitation or defense of laches and thereby preserve the guild's right to prosecute the case after a court decision."

In the latter instance, however, a WGA spokesman explained that the guild reserves the option of proceeding immediately in prosecutions of those who refuse waivers.

The gesture is the first official sign of bending by the guild leadership to the mandate for leniency implicit in the reinstatement of nine expelled and suspended hyphenates and the sharp reduction of their fines. (Hollywood Reporter 11/27/73). The issue of fines still is in contention, and may be headed for the courts.

While the WGA reaffirmed its right to discipline supervisory employees, and Furia reminded the membership that it had sanctioned that course, the board took explicit cognizance of the membership appeals vote that restored the disciplined nine to good standing.

Furia, in a letter mailed to guild members today, reveals that WGA legal counsel has advised the board that law suits calculated to collect reduced fines — denounced as illegal by the AMPTP (Hollywood Reporter 11/29/73) — "might be delayed until the NLRB charges against the guild have been determined."

A halt on further legal expenditures — described by Furia as already substantial — will not be "needlessly" made by instituting litigation at this time, he notes. However, he cautions that the WGA will "offer a vigorous legal defense" should any of the disciplined hyphenates sue for reversal of their reduced fines.

Non-supervisory employees charged with strike violation will be prosecuted without delay, Furia stressed.

Furia conceded that the question of WGA jurisdiction over supervisory employees "is one which ultimately must be decided by the courts," and describes the deferred prosecution plans as one designed to serve the guild's "best interest."

Thirty nine disciplinary cases were awaiting trial, 10 were pending before the board, and 20 were yet to be presented to the board by investigatory and disciplinary committees as of Nov. 12. There was no breakdown on how many of the total of 69 are supervisory employees.

Respondent's Exhibit 20

DAILY VARIETY
Friday, December 7, 1973

WGAW Puts Brakes On Actions Against Fined Hyphenates

Issue of the hyphenates and whether or not Writers Guild of America has the right to discipline them will eventually be settled in court, so WGA West board has decided to put the brakes on actions against hyphenates, and not go to court to seek collection of fines imposed on hyphenates for alleged violations of Guild rules during last spring's strike.

That was the essence of a letter sent Guild members by WGAW prexy John Furia Jr., who pointed out there are unfair labor practice charges against the Guild now pending before the National Labor Relations Board. Charges were filed by Association of Motion Picture & TV Producers, and involve Guild's right to discipline hyphenates (exec producers, producers, associate producers, directors, story eds).

Furia commented, "We believe that we have the right to discipline supervisors, an action which the membership previously affirmed, but the issue is one which ultimately must be decided by the courts."

Board has decided "the best interest of the Guild will be served by proceeding as we have in the past in all of these cases unless the individual member agrees to waive the statute of limitations or laches as a defense. In this event the board will delay further proceedings until a final decision is rendered by the courts on the unfair labor practice charges. Of course the Guild in any case where the individual member does not agree to waive the statute of limitation or defense of laches and thereby preserve the Guild's right to prosecute the case after a court decision." ("Laches" means undue delay in asserting a right).

Furia said board decision affirms its position anent the Guild's right to discipline hyphenates. However, he also noted that in recent hyphenate appeals of their various penalties, the membership erased any expulsions, suspensions or censures, leaving only fines.

Guild legal counsel told the board enforcement via a lawsuit to collect fines in a state court might be delayed until the NLRB charges against Guild have been decided.

Guild legal expenses "which are already substantial will not needlessly be expended by litigation at this time," said Furia. Virtually all nine hyphenates fined have said they will not pay.

Furia said also that some members may file suits of their own against the Guild, in which case WGAW will fight them.

He noted that board action does not apply to anyone but hyphenates, that the Guild will continue without delay on disciplinary matters of writers who are not hyphenates.

Next board meeting will be held Dec. 17.

Resp Exhibit 21

Assoc. #2

mark vii ltd.

mark vii ltd. / 100 Universal City Plaza/Universal City/Calif. 91608

January 22, 1973

Writers Guild of America, West
8955 Beverly Boulevard
Los Angeles, California 90048

Attention: Membership Committee

Gentlemen:

In light of the fact that I have done no writing for credit in nearly five years and have functioned solely as a producer in that period, I therefore, respectfully request that you accept my resignation from the Writers Guild of America, West, as of this date.

Sincerely,

Herman S. Saunders

Herman S. Saunders
Producer, ADAM-12

HSS:rd

cc: Ranald MacDougall

EXHIBIT "A"

559

WRITERS GUILD OF AMERICA, west, Inc.

Affiliated with the Writers Guild of America, east, Inc.

Member of International Writers Guild

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Assoc 3

January 30, 1973

Mr. Herman S. Saunders
3551 Vista Haven Road
Sherman Oaks, California 91403

Dear Mr. Saunders:

This will acknowledge receipt of your letter to the Membership Committee of the Guild dated January 22, 1973, in which you tendered your resignation from the Guild. In view of current contract negotiations and the importance to the Guild of maintaining effective communication with its membership, the Board of Directors has declined to accept your resignation in accordance with Section 8 of Article IV of the Guild's Constitution and By-Laws. The Board voted that your membership shall continue in the Guild at least for the period during which the negotiations are being conducted plus an additional six months thereafter. If it is your desire to once again tender your resignation after the conclusion of the negotiations, but prior to the expiration of said six-month period, please feel free to do so, and the Board will once again consider your application.

Please be assured that your rights and privileges in the Guild are not impaired by your tender of resignation.

Sincerely,

Michael H. Franklin
Executive Director

MHF:mw

RANALD MacDOUGALL
President

SCREEN BRANCH
FAY KANIN
President
LORENZO SEMPLE, JR.
Vice-President
WILLIAM LUDWIG
Secretary-Treasurer

TELEVISION-RADIO BRANCH
JOHN J. FURIA, JR.
President
DAVID MARRON
Vice-President
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Assistant Executive Director
LEONARD CHASSMAN
Executive Assistant
JOHN A. MENDONSA
Resident Counsel

DEPARTMENT HEADS
AILEEN BACKOFEN
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BLANCHE BAKER
Registration
MAUREEN D. BEATTIE
Residuals
MARY DORFMAN
Credits
HELYNE LANDRES
Membership
LOIS McGUIRE
Administration
ELENA THURSTON
Secretaries

ALLEN RIVKIN
Public Relations

560

EXHIBIT "B"

n....e....W....S....

FROM:
WRITERS GUILD OF AMERICA, WEST
8955 Beverly Boulevard
Los Angeles, California 90048
PHONE 274-8601

CONTACT: ALLEN RIVKIN
276-4974

Arbitration #4

DATE: April 14, 1973

RELEASE: I M M E D I A T E

The Writers Guild over the weekend filed charges against five writer-producers employed by Universal Studios for violating strike rules imposed on all members since March 6, when the union struck all studios producing motion pictures and television.

Those charged with crossing a picket line for the purpose of going to work for a struck company are: Jon Epstein, Cy Chermak, Herman Saunders, David Victor and Jack Webb. They are ordered to appear before a Guild trial board and, if convicted, face substantial fines or suspension or expulsion or all of these penalties. Those convicted will appear on a "Roll of Dishonor" - according to Guild officials, and be listed in Guild publications "in perpetuity so that Guild members for years to come will never forget." A Guild spokesman characterized those members guilty of scabbing as "pariahs who have betrayed their colleagues."

It was reported to the Guild that Lew Wasserman and Sidney Sheinberg, Universal executives, "are threatening our hyphenates that if they don't return to work, they will lose their jobs." The Guild said they "fully expected a few weak sisters would yield to the Wasserman-Sheinberg threats" - but assured others who are standing firm that the Guild Board has adopted the position that no deal will be made with any company which has discharged a hyphenate unless he is reinstated to the project on which he was working.

Among others whose trial dates have been set for violating similar Guild strike rules are: Robert Blees, May 1; Michael Crichton, May 1; and John Mantley, May 4. Trial dates for the Universal hyphenates are: Epstein, May 2; Chermak, May 2; Saunders, May 4; Victor, May 2; and Webb, May 8.

Epstein is writer-producer of "Owen Marshall," Chermak writer-executive producer of "Ironside," Saunders writer-producer of "Adam 12", Victor writer-executive producer of "Owen Marshall" and "Marcus Welby," Webb writer-executive producer of "Adam-12 and "Emergency," Blees, writer-story editor of "Barnaby Jones," Crichton writer-director of the MGM film "Westworld" and Mantley writer-executive producer of "Gunsmoke."

# # #

561

The HOLLYWOOD REPORTER

April 16, 1973

MAJOR LOT HYPHENATES WILL BE TRIED AS SCABS

Webb, Mantley, Victor Among Eight Accused; WGA Targets Wasserman

By Will Tusher

Repeatedly pinpointed by both sides as the most explosive issue in the Writers Guild strike, the hyphenate powder keg blew sky high over the weekend as the WGA arraigned six producer-writers, one director-writer and a story editor-writer on charges of scabbing.

Seven of television's most popular series and one theatrical film were involved in the disciplinary action resulting from alleged crossing of picket lines to work for struck companies. Jack Webb and four others are employed at Universal.

The guild also accused MCA president Lew Wasserman, board chairman of the Association of Motion Picture and Television Producers — and the most powerful figure on the management negotiating team — of threatening to discharge hyphenates unless they defy the walkout and return to work at Universal. Wasserman was named jointly with Sid Sheinberg, exective v-p of MCA and president of Universal Television.

Sheinberg promptly exonerated Wasserman, assumed all responsibility for any such alleged action, and served notice that Universal intends to hold all producer-hyphenates to their contracts and to replace them if they refuse to perform services. Sheinberg told The Hollywood Reporter that Universal is determined to meet its commitment to deliver 13½ hours of television series and an unspecified number of non-series network programs.

All faced with "substantial fines or suspension or expulsion, or all three of these penalties," the following hyphenates stand accused of strike violations:

Jack Webb (Universal) — executive producer of "Adam-12" and "Emergency," both on NBC.

David Victor (Universal) — executive producer of "Owen Marshall, Attorney-at-Law" and "Marcus Welby, M.D.," both on ABC.

Cy Chermak (Universal) — executive producer of "Ironside," NBC.

Jon Epstein (Universal) — producer of "Owen Marshall."

Herman Saunders (Universal) — producer of "Adam-12."

(Continued on Page 9)

562

EXHIBIT "A"

WGA's Hyphenate Bombshell —

(Continued from Page 1)

John Mantley — executive producer of CBS' "Gunsmoke."

Robert Blees — story editor, CBS' "Barnaby Jones."

Michael Crichton — writer-director of the feature film, "Westworld," shooting at MGM.

The action was announced in a strongly worded statement issued Saturday at the direction of WGA executive director Michael Franklin following a board meeting Friday. The guild took its promised hard line on strike observance, and tacitly admonished management that it does not propose to give further ground on hyphenate jurisdiction.

"Those convicted," declared the guild statement, "will appear on a 'roll of dishonor' . . . and be listed in guild publications 'in perpetuity' so that guild members for years to come will never forget. A guild spokesman characterized those members guilty of scabbing as 'pariahs who have betrayed their colleagues.'"

Ordered to appear before guild trial boards on the following dates are Blees and Crichton, May 1; Epstein, Chermak and Victor, May 2; Mantley and Saunders, May 4, and Webb, May 8.

Meanwhile, the WGA renewed its pledge that it would enter into no agreement with any company without a pre-condition calling for reinstatement, without prejudice, of any hyphenate discharged for strike activity. At the same time the union said "it fully expected a few weak sisters would yield to the Wasserman-Sheinberg threats."

Effect of the WGA action on the newly formed hyphenate organization is certain to be watched with suspenseful interest. The group's 12-man steering committee is on record with unequivocal support of the strike. Steering committee membership includes Mantley, now accused of violating the strike rules, and WGA board member John Furia Jr., president of the WGA's television branch and a candidate to succeed Ranald MacDougall, also a hyphenate, as president of the guild. The steering committee chairman, Robert Cinader, is producer of "Emergency" under the supervision of Webb, a fellow hyphenate ordered to appear before the WGA trial board.

Intimidation attributed to Wasserman and Sheinberg "was reported to the guild," the WGA statement declared, but no claim of substantiation was advanced. Sheinberg acknowledged to The Hollywood Reporter that some hyphenates have been warned of dismissal if they fail to report to work, but he insisted he was the only one who stated the situation in those terms.

"To the best of my knowledge," he said, "Mr. Wasserman hasn't had any communication with any hyphenates whatsoever. So, to the extent that there is someone who has been functioning in this area the responsibility is mine."

Sheinberg declared, however, that there have been very few instances in which such pressure has been exerted. He noted that hyphenates on the Universal payroll are employed primarily as producers, and said that their writing potential is "either incidental, minimal or non-existent." He also stated that Universal has not adopted an across-the-board policy on the question, but has been dealing with each situation on its merits and circumstances.

"There is an old adage in show business, the Writers Guild notwithstanding, that the show must go on," Sheinberg said. "As long as there is a performer or a writer or a director or an executive functioning, that is going to continue to be the case. The show will go on at Universal. It will go on as best we can make it go on, and with whatever means available at our disposal to get the show to go on."

Sheinberg noted — virtually echoing an earlier observation by hyphenate steering committee chairman Cinader (Hollywood Reporter 4/9/73) — that the writers strike has created problems for hyphenates which do not face free lance writers. He said that as a consequence his studio has been faced with hard production decisions which it means to meet forcefully.

"The longer the strike lasts," he contended, "the more we're faced with the realistic prospect of our production being bunched up in one period of time, and the more it forces us to make certain decisions with regard to certain activities that we can get on the stages early because we have to face the prospect of this bunched up production coming later. . . . The very existence of the strike forces this kind of activity which could come to pass."

Under such circumstances, Sheinberg illustrated, the studio would be obliged to go into immediate production on non-episodic shows which under normal conditions wouldn't go before the cameras until a month or two from now.

"If we've got to face the prospect that we're going to be up to our tails in production later because of the strike," he observed, "it behooves us — as a matter of fact we have very little choice — to take whatever it is now and go forward with it. If the assigned person on that show, the producer, is a hyphenate and isn't reporting for work, we've got to make alternate arrangements."

Assoc. 4B

GUILD CHARGES WEBB VIOLATED PICKET LINE

Actor-producer Jack Webb and four other writer-producers were accused by the Writers Guild Saturday of crossing a guild picket line in violation of strike rules against motion picture studios.

Ordered to face guild trial boards next month were Webb, executive producer of Adam 12 and Emergency; Cy Chermak of Ironside; Herman Saunders of Adam 12; David Victor of Owen Marshall and Marcus Welby, M.D. and Jon Epstein of Owen Marshall.

If convicted, the accused face heavy fines or suspension or expulsion from the guild. Their names could also appear on a "roll of dishonor" to be published "in perpetuity so that guild members for years to come will never forget," the guild said.

Neither Webb nor the others named had any immediate comment.

LOS ANGELES TIMES
April 15, 1973

EXHIBIT F

Assoc. 4 C

DAILY VARIETY

April 16, 1973
Pages 1, 9

WGA Indicts Five At Universal For Strike Violations

In its first major move against alleged violators of strike rules since Writers Guild of America began its industrywide walkout March 6, WGA has filed charges against five producer-writers who work at Universal. At the same time, a WGA spokesman said, "It was reported to the guild that Lew Wasserman (MCA president) and Sidney Steinberg (U TV prez) are threatening our hyphenates that if they don't return to work, they will lose their jobs."

Charged with crossing picket lines for purposes of going to work at a struck company are these U hyphenates—Jon Epstein, producer of "Owen Marshall"; Jack Webb, exec producer, "Adam 12" and "Emergency"; David Victor, exec producer, "Marcus Welby" and "Marshall"; Cy Chermak, exec producer, "Ironside"; Herman Saunders, producer, "Adam 12."

They have been ordered to appear before a WGA trial board, and if convicted, face "substantial"

(Continued on Page 9, Column 1)

WGA ACCUSES 5 PRODUCER-WRITERS AT U OF VIOLATING STRIKE RULES

(Continued from Page 1, Column 3)

fines, suspension or expulsion, or all of these penalties. Those convicted will appear on a "roll of dishonor," and be listed in Guild publications "in perpetuity so that Guild members for years to come will never forget," said a Guild spokesman who labeled members found guilty of scabbing as "pariahs who have betrayed their colleagues."

Same source said WGA "fully expected a few weak sisters would yield to the Wasserman-Sheinberg threats," but assured others on strike that WGA board has adopted position that no deal will be made with any company which has discharged a hyphenate unless he is reinstated to the project on which he was working.

Among other hyphenates for whom trial dates have been set on charges of violating Guild strike rules are Robert Blees, story ed of "Barnaby Jones," May 1; Michael Crichton, writer-director of MGM film, "Westworld"; John Mantley, exec producer, "Gunsmoke," May 4. Other trial dates: Epstein, May 21; Chermak, May 2; Saunders, May 4; Victor, May 2; Webb, May 8.

Newly formed Hyphenates Lobby demand that a 12-week preparation period on shows be included in Writers Guild of America demands to management will be supported by the Guild's negotiating committee, according to WGA West exec director Michael H. Franklin.

"We think that the support of this group is excellent," Franklin declared.

WGA, which struck the industry March 6, meanwhile has signed four more indies, a total of 39. Latest to sign were Playboy Prods. (Hugh Hefner), Dan Curtis Prods., William Carruthers Co. and Bob Banner Associates.

Franklin said anent the Nat'l Labor Relations Board regional decision to issue a complaint against WGA, as sought by Association of Motion Picture & Tv Producers, that that complaint has not yet been received. When it is, a hearing will be held, and, if the Guild should lose in that session, it will then appeal, the exec said.

BEST COPY AVAILABLE

Ame #5

Affiliated with the Writers Guild of America, east, Inc.
Member of International Writers Guild
8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 6-7711
Cable: INVADATEK, Los Angeles

February 2, 1973

Walter S. Hoffman
7657 Orion Avenue
Van Nuys, California 91406

Dear Mr. Hoffman:

On June 27, 1972 at your request, you were placed on Withdrawn status.

We call your attention to Section 5(c) of Article IV of the Guild's Constitution and by-laws which provides that by action of the Board of Directors and upon notice to the member and for good cause any member of the Guild who has been placed on Withdrawn status may be restored retroactively to the status held by him at the time of application for Withdrawn status.

In view of the current contract negotiations and the importance to the Guild of maintaining effective communication with its membership, the Board of Directors at its meeting in January voted to restore you to Current status in the Guild effective February 15, 1973.

The Board is aware that by reason of your restoration to Current status the matter of payment of basic dues may become a financial hardship to you. If such is the case, would you kindly advise our membership secretary who in turn will refer the matter to the Membership Committee which is studying the question of the application of basic dues requirements to those members affected by the Board's decision.

Sincerely,

David Harmon
Secretary

DH:mw

565

ASSOC. 5a

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, east, Inc.
Member of International Writers Guild

8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601
Cable: INTWRITER, LOS ANGELES

On _____ at your request, you were placed on Withdrawn status.

We call your attention to Section 6(c) of Article IV of the Guild's Constitution and By-Laws which provides that by action of the Board of Directors and upon notice to the member and for good cause any member of the Guild who has been placed on Withdrawn status may be restored retroactively to the status held by him at the time of application for Withdrawn status.

In view of the current contract negotiations and the importance to the Guild of maintaining effective communication with its membership, the Board of Directors at its meeting in January voted to restore you to ——— status in the Guild effective February 15, 1973.

The Board is aware that by reason of your restoration to ——— status the matter of payment of basic dues may become a financial hardship to you. If such is the case, would you kindly advise our membership secretary who in turn will refer the matter to the Membership Committee which is studying the question of the application of basic dues requirements to those members affected by the Board's decision.

Sincerely,

/s/ David Harmon
DAVID HARMON
Secretary

DH:mw

566

ASSOC. #7

WRITERS GUILD OF AMERICA, WEST, INC.

[SEAL]

Affiliated with the Writers Guild of America, west, Inc.
Member of International Writers Guild
8955 BEVERLY BOULEVARD
LOS ANGELES, CALIFORNIA 90048 • CRestview 4-8601
Cable: INTWRITER, LOS ANGELES

May 7, 1973

TO ALL MEMBERS:

Enclosed is a copy of the Guild's "Rules for the Conduct of Members During a Strike."

These rules were previously distributed, but we continue to receive inquiries concerning them and each member should have and retain a copy. Old Rule 30 as contained in the rules dated February 20, 1973 has been deleted, and old Rule 31 has been renumbered Rule 30.

Old Rule 30 provided that no member shall work with any individual suspended or disciplined because of violating strike rules. The Guild's position has been, and remains, that it will press disciplinary action as vigorously as the law and good union principles permit, against every member guilty of violating strike rules. Because the old rule could be misconstrued to mean that the Guild was maintaining an improper saction, a matter of anathema to this Guild, the Board of Directors rescinded old Rule 30 at its regular monthly meeting of April 30, 1973. This action was taken voluntarily, in the belief that ample disciplinary measures remain available to trial committees, including penalties of fines, expulsion from membership, and other sanctions, and with the conviction that even in the pursuit of strike discipline,

members of this Guild do not wish to be a part of an action which carries the odious implications of a "black list."

If you have any questions about these rules, please call the Guild.

Very truly yours,

/s/ Ranald MacDougall
RANALD MACDOUGALL
President

Enc.

WRITERS GUILD OF AMERICA, WEST, INC.

May 1, 1973

RULES FOR THE CONDUCT OF MEMBERS DURING A STRIKE

1. Any act or conduct which is prejudicial to the welfare of the Guild is subject to disciplinary action. Conduct tending to defeat a strike or in any way weaken its effectiveness is per se conduct prejudicial to the welfare of the Guild.
2. Writing for any struck producer as designated in a restraining order is prohibited. The term producer includes any employer or potential employer, whether studio, individual, production company network or any representative or subsidiary or associate thereof.
3. Writing for a struck producer is prohibited even though the member be employed by or under assignment to the said producer at the time the strike is called, regardless of the capacity in which the member is employed.
4. Writing for a struck producer will cease immediately upon the calling of the strike, regardless of the extent of the work already completed for said producer as the result of employment commenced prior to the date of the strike.
5. The prohibition against writing for a struck producer obtains regardless of the place at which writing might be done, i.e., whether on or off the premises of the producer.
6. No delivery of literary material shall be made to a struck producer regardless of when it was written, solicited, contracted or paid for.
7. The submission of literary material to a struck producer is prohibited even though neither negotiation for nor consummation of a sale is contemplated until after settlement of the strike.
8. Members shall file with the Guild copies of all literary material completed for and delivered to a struck producer as of the calling of the strike in order that they may be on record with evidence to substantiate their timely work stoppage in the event this matter comes into issue.

9. Immediately upon the calling of a strike members are to inform their agents or any other representatives of all the Guild's strike rules and revoke or suspend as to a struck producer any authorization for representation, either for the sale of material or for services for the duration of the strike.
10. Immediately upon the calling of a strike each member must serve written notice upon each struck producer who may at that time have in his possession any literary material owned by the member. A copy of such notice is to be sent to the Guild. Notice shall be in the following form:

> "I hereby demand that you promptly return to me the following named literary material currently in your possession and owned by me:
>
> (Title of Material)
>
> _____
>
> (Signature)"
>
> _____

11. Members are prohibited from engaging in any conference, negotiations, discussions or meeting of any kind, whether in person, by telephone or through the mail, or through an agent or other representative, with any struck producer, his employees, associates, subsidiaries and/or representatives regarding the sale of any literary material or any contract for writing services even though the effective date of such proposed agreement be scheduled for a time after the settlement of the strike.
12. All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.
13. Members are prohibited from entering the premises of any struck producer for the purpose of discussion of the sale of material or contract of employment,

regardless of the time at which it is to take effect. Members are also prohibited from entering the premises of any struck producer for the purpose of viewing any film whether it be a completed picture, stock footage, television pilot or whether it be by nature documentary or industrial or any other type. Should a member find it necessary to visit the premises of a struck producer for any reason apart from the foregoing he should inform the Guild in advance of the nature of such prospective visit.

14. Members may not accept from a struck producer for reading, perusal, study or any other purpose any sample, script, format, presentation or literary material of any nature which might have any actual or potential connection with future employment of said members as writers or otherwise even though such services are to begin after the conclusion of the strike.
15. The use of a fictitious name of any kind as a means of circumventing strike rules and regulations is prohibited whether or not it be registered with the Guild.
16. The commencement of an assignment for a struck producer or the sale of literary material to a struck producer so soon after the settlement of a strike as fairly to give rise to the inference that negotiations for same have been conducted during the course of the strike shall be cause for investigation and is disciplinable, if evidence supports such inference.
17. The acts of any agent or other representative acting on behalf of a member will be imputed to the member in the absence of satisfactory evidence to the contrary.
18. Any agreement entered into by a member prior to the commencement of a strike but in anticipation thereof for the sale or delivery of literary material not then written but to be delivered after the settlement of the strike is forbidden.
19. A member may not, during the course of a strike, conduct negotiations with a struck producer for financing the production of any of his literary material or scripts, or for his participation in such production in any capacity.

20. Every member has the duty of reporting to the Guild the name of any agent or producer or person or entity affiliated with the production, administration or management of a struck producer or company who, in disregard of an existing strike, solicits material from, or the employment of such member or any other member, or otherwise seeks to entice a member into violating the strike rules or regulations.
21. No member, his good intentions granted, may negotiate with any struck producer the settlement of a strike or any phase thereof.
22. A member is chargeable with knowledge of all strike rules and regulations, of any strike information or developments circularized through the mail to the membership and of any strike information made known to the entertainment industry through any recognized medium of communication such as trade papers, newspapers, radio broadcasts or telecasts, etc., unless he offers satisfactory evidence that it was impossible for him to receive such strike information.
23. Writers who are not members of the Guild, but who are reasonably chargeable with knowledge that the Guild is on strike or anticipates striking certain producers, who nevertheless write for or sell literary material to struck producers, or who in any way act to defeat the best interests of the Guild during a strike will be excluded from membership in the organization.
24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts solely to writing.
25. A member may not, during a strike attempt to solicit or negotiate in behalf of a struck producer for the services of a writer, whether a member or not, or for the purchase of literary material, whether or not written by a member.
26. The term "member" encompasses anyone admitted to the membership rolls of the Writers Guild of America, both West and East, and classified as either

active or inactive, associate, withdrawn or suspended, whether in good standing or bad.

27. No member may be relieved of the responsibility for the payment of any fine, or from any disciplinary action resulting from any infraction of strike rules by offering his resignation from the Guild. Membership in any guild or union is not a voluntary association of parties but a binding contract between them which cannot be abrogated unilaterally by either party except under provisions of the Guild constitution or state or federal law. It should be noted that fines levied for infringement of strike rules are collectable in a suit at law.
28. The Guild shall have the authority to assign and direct members in the performance of duties relating to the strike including, but not limited to, picket duty. Any member found guilty of refusal to perform picket duty shall be fined not less than $100 per day for each day of such refusal to perform.
29. The following is excerpted from Article X, Paragraph A of the Guild Constitution and By-Laws:

"Any member of the Guild who shall be found guilty, after a hearing conducted in accordance with the procedures herein prescribed, of any act or failure to act, or any conduct which is prejudicial to the welfare of the Guild, or any of its Branches . . . . or of failing to observe the Constitution and By-Laws of this Guild or any lawful order of the Council or of a Branch Board . . . . may be suspended, declared not in good standing, expelled from membership in the Guild, be asked to resign or in lieu thereof, or in addition thereto, he may be censured, fined or otherwise disciplined."

30. Enforcement of these rules may be delegated to such committee or committees as the Council may designate.

ASSOC. 10

UNIVERSAL CITY STUDIOS, INC.
AN MCA INC. COMPANY

March 5, 1973

Dear

Pursuant to a reopening provision in the Theatrical and Television Collective Bargaining Agreement between the Writers Guild of America and ourselves the Guild has elected to terminate the agreement, effective at midnight March 4, 1978. We have been negotiating with the Guild for a new collective bargaining agreement with a view to reaching an agreement which is fair and reasonable to the writers and the member companies of the Association of Motion Picture and Television Producers.

If the Guild calls a strike, we intend to continue our operations and meet our contractual and moral obligations to supply theatrical and television motion pictures to our customers and the public.

If you are a member of the Writers Guild you may have received from the Guild a set of rules purporting to govern your conduct during the strike "regardless of the capacity" in which you are employed. We also understand that the Guild may have threatened you with fines and blacklisting in the event it calls a strike and you render services for us in any capacity or you fail to report for picket duty. Any attempt of the Guild to interfere with your services for us in a capacity other than as a writer is unlawful and the Guild's threat of fines, censure, expulsion and blacklisting is unenforceable.

In 1970 the Regional Office of the National Labor Relations Board advised us and the Guild that similar action and threatened action against members of the Guild was illegal.

Should there be a strike, and we hope there will not be, we expect you to fulfill your contractual obligations to us as a producer (director) (supervisor) and report to

work notwithstanding any picket lines or other attempt to interfere with your complying with your contractual obligations. We trust that you understand that we will have no alternative but to resort to our legal rights and remedies in the event of a failure on your part to do so. Should the Guild attempt to fine or otherwise discipline you for meeting such obligations to us, you will be provided with a defense to any such proceeding, without cost to you, and you will be indemnified against any fine which might be imposed and is legally sustained.

Very truly yours,

/s/ [Illegible]
/s/ [Illegible]

ASSOC. 11

UNIVERSAL TELEVISION

BY SPECIAL MESSENGER

October 4, 1968

Writers Guild of America, West
8955 Beverly Blvd.
Los Angeles, California 90048

Attn: Mary Dorfman

THE GALLOPING SKIN GAME (#29601)—
IT TAKES A THIEF series

Gentlemen:

Enclosed for the purpose of an automatic arbitration are three copies of each of the following.

1. Treatment by Leigh Chapman dated 3.7.68.
2. First draft by Leigh Chapman entitled SOMETHING OLD, SOMETHING NEW, SOMETHING BORROWED.
3. Second draft by Leigh Chapman entitled as in 2. above.
4. Rewrite by Gene L. Coon (Production Executive) dated April 18, 1968 and rev. 5.31.68.
5. Final script dated April 18, 1968 with final revision dated 9.30.68.

Our proposed credits are:

Written by Leigh Chapman and Gene L. Coon

Pursuant to the WGA Agreement, we hereby specify six (6) days after your receipt of above material as the time until which we will withhold final determination of credits. An early decision will be appreciated.

Very truly yours,

/s/ Evelyn Rhine
EVELYN RHINE
Law Dept.

cc: Gene L. Coon
Leigh Chapmen

RECEIPT ACKNOWLEDGED:
By /s/ [Illegible]
for Writers Guild of America
Date: [Illegible] Time: [Illegible]

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Division of Judges

Case No. 31-CB-1203-2
WRITERS GUILD OF AMERICA, WEST, INC.
and
ASSOCIATION OF MOTION PICTURE AND
TELEVISION PRODUCERS, INC.

Case No. 31-CB-1223
WRITERS GUILD OF AMERICA, WEST, INC.
and
AMERICAN BROADCASTING COMPANIES, INC.
COLUMBIA BROADCASTING SYSTEM, INC.
NATIONAL BROADCASTING COMPANY, INC.

Case No. 31-CB-1316
WRITERS GUILD OF AMERICA, WEST, INC.
and
ASSOCIATION OF MOTION PICTURE AND
TELEVISION PRODUCERS, INC.
WRITERS GUILD OF AMERICA, WEST, INC.

Case No. 31-CB-1313
Consolidated
and
AMERICAN BROADCASTING COMPANIES, INC.
COLUMBIA BROADCASTING SYSTEM, INC.
NATIONAL BROADCASTING COMPANY, INC.

Case No. 31-CB-1355
WRITERS GUILD OF AMERICA, WEST, INC.
and
QM PRODUCTIONS

STIPULATION OF FACTS

It is hereby stipulated by and among Counsel for the General Counsel of the National Labor Relations Board, herein called General Counsel, Writers Guild of America, West, Inc., herein called Respondent and Association of Motion Picture and Television Producers, Inc., American Broadcasting Companies, Inc., Columbia Broadcasting System, Inc., National Broadcasting Company, Inc., and QM Productions, herein called Charging Parties, being all parties to these proceedings as follows:

1. (a) Annually, in the course and conduct of its business operations, QM sells television and motion picture films valued in excess of $50,000 directly to customers located outside the State of California.

   (b) QM is now, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

   (c) QM is now, and at all times material herein has been, an employer within the meaning of Section 8(b)(1)(B) of the Act.

2. At all times material herein, it has been the policy of Respondent not to permit any member to resign from membership in the Guild during the pendency of collective-bargaining negotiations between the Respondent and the Charging Parties and for at least six months after the conclusion of such negotiations.

3. Respondent has issued Notices of Disciplinary Hearing and Charges against the following of its members based on said members' conduct during Respondent's 1973 strike against Charging Parties herein, said members names also appearing on G. C. Exhibit 3. Said charges are attached hereto and incorporated herein as G. C. Exhibits 15A-W inclusive.

NAME	EXHIBIT NUMBER
Hugh Benson	15A
Jerome Bredouw	15B
Robert Blees	15C
Robert Cinader	15D
Ron Honthaner	15E
Leonard Katzman	15F
David Levinson	15G
William Roberts	15H
Albert Ruddy	15I
Coles Trapnell	15J
Herbert Wright	15K
Stephen Heilpern	15L
James McAdams	15M
Martin Ransohoff	15N
Andrew J. Fenady	15O
Thomas Leetch	15P
Thomas L. Miller	15Q
Cy Chermack	15R
Frank Paris	15S
Larry Gordon	15T
Jack Haley, Jr.	15U
Philip Kaufman	15V
David S. Peckinpah	15W

4. Respondent held disciplinary trials based upon the charges as noted in paragraph 3 above. The transcripts of said trials are attached hereto and incorporated herein as G. C. Exhibits 16A-Q inclusive.

NAME	EXHIBIT NUMBER
Cy Chermack	16A
Robert Cinader	16B
Jerome Bredouw	16C
Jon Epstein	16D
Michael Chrichton	16E
Hugh Benson	16F
David Levinson	16G
William Roberts	16H
Albert Ruddy	16I
Herman Saunders	16J
Frank Paris	16K
Coles Trapnell	16L
Robert Blees	16M
John Mantley	16N
David Victor	16O

5. Respondent's Board of Directors based upon the charges as noted in paragraph 3 above and the hearings

as noted in paragraph 4 above issued the following decisions in said cases which are attached hereto and incorporated herein as G. C. Exhibits 17A to I inclusive.

NAME	EXHIBIT NUMBER
Hugh Benson	17A
Robert Blees	17B
Cy Chermack	17C
Jon Epstein	17D
David Levinson	17E
John Mantley	17F
Herman Saunders	17G
David Victor	17H
Robert Cinader	17I

6. Respondent has issued internal disciplinary charges, conducted trials, and imposed penalties as indicated hereinbelow upon persons employed in the positions referred to in paragraph 9 of the Second Consolidated Amended Complaint of November 26, 1973, all of whom were members of the Respondent at the time charges were preferred against them, and to all of whom Respondent mailed its Strike Order and Strike Rules:

(a) Barry Crane, Producer/Director for Paramount was charged by Respondent's Board of Directors on July 27, 1973, which charge is attached hereto and incorporated herein as G. C. Exhibit 18; was tried before a Trial Committee of Respondent on August 15, 1973 and fined $10,000 and expelled from membership by Respondent's Board of Directors on August 31, 1973, whose decision is attached hereto and incorporated herein as Exhibit 19.

(b) Roger Lewis, Producer for Metro-Goldwyn-Mayer, Inc. was charged by Respondent's Board of Directors on November 8, 1973, which charge is attached hereto and incorporated herein as G. C. Exhibit 20, and is scheduled to be tried before a Trial Committee of Respondent on December 18, 1973.

(c) Mark Rosin, whose name is to be added to G. C. 3 as General Programming Executive for Columbia Broadcasting System, Inc., was charged by Respondent's Board of Directors on November 8, 1973, which charge is attached hereto and incorporated herein as G. C. Ex-

hibit 21, and was scheduled to be tried before a Trial Committee of Respondent on November 29, 1973.

(d) Philip Barry, Executive Producer for Columbia Broadcasting System was charged by Respondent's Board of Directors on November 6, 1973, which charge is attached hereto and incorporated herein as G. C. Exhibit 22, and is scheduled to be tried before a Trial Committee of Respondent on December 13, 1973.

7. (a) Further scheduled internal proceedings of Respondent with respect to the above-described disciplinary proceedings are as follows: appeals from decisions of the Respondent's Board of Directors in the cases of Robert Blees, Jon Epstein, John Mantley, Herman Saunders and David Victor, were scheduled to be heard before a special membership meeting of the Writers Guild of America, West, Inc., on November 12, 1973. Said notices of appeal are attached hereto and incorporated herein as General Counsel Exhibits 23 A-H inclusive.

NAME	EXHIBIT NUMBER
Robert Blees	23A
Jon Epstein	23B
John Mantley	23C
Herman Saunders	23D
David Victor	23E
David Levinson	23F
Robert Cinader	23G
Hugh Benson	23H
Barry Crane	23I

(b) An appeal was filed by Cy Chermack in the above-described disciplinary proceeding; however, said appeal at his request is not scheduled to be heard until the next scheduled general membership meeting of Respondent. A copy of said appeal is attached hereto and incorporated herein as General Counsel's Exhibit 23J.

8. Prior to the meeting as noted in paragraph 7 above, the Writers Guild sent to all of its members an agenda of this meeting and an explanation of the forms of discipline which could be meted out to Guild members, procedural rules and sample ballot a copy of which is attached hereto and incorporated herein as Respondent's Exhibit 12.

9. The Writers Guild on November 6, 1973, sent to all of its members a reminder of the meeting scheduled for November 12, 1973, a copy of which is attached hereto and incorporated herein as Respondent's Exhibit 13.

10. The Writers Guild gave to all of its members in attendance at the November 12, 1973 meeting an agenda and the procedural rules for this meeting, a copy of which is attached hereto and incorporated herein as G. C. Exhibit 24.

11. Writers Guild members in attendance at the November 12 meeting were given ballots in the cases of Robert Blees, Jon Epstein, John Mantley, Herman Saunders, David Victor, Hugh Benson, Robert Cinader, Barry Crane and David Levinson, an exemplar of which is attached hereto and incorporated herein as Respondent's Exhibit 14.

12. The Writers Guild sent to all of its members a letter dated November 26, 1973, which detailed the results of the proceedings at the November 12 meeting and the final disposition of the disciplinary proceedings as set forth in paragraph 7 above, a copy of which is attached hereto and incorporated herein as Respondent's Exhibit 15.

13. The Writers Guild, by letter dated November 30, 1973, offered to stay all further disciplinary proceedings against certain persons in the categories set forth in Paragraph 9 of the Second Amended Consolidated Complaint, excluding those persons set forth in paragraph 7 above, pending resolution of consolidated National Labor Relations Board Cases Nos. 31-CB-1203-2, 31-CB-1223, 31-CB-1316, 31-CB-1313 and 31-CB-1355. An exemplar of said letter is attached hereto and incorporated herein as G. C. Exhibit 25.

14. The Writers Guild intends to offer to stay the payment of all fines by the persons set forth in paragraph 7 above, pending resolution of consolidated National Labor Relations Board Cases Nos. 31-CB-1203-2, 31-CB-1223, 31-CB-1316, 31-CB-1313 and 31-CB-1355, by letters similar to G. C. Ex. 25.

15. The Writers Guild sent to all of its members a letter dated December 7, 1973, in which the Guild's posi-

tion regarding the proposed stays was set forth, a copy of which is attached hereto and incorporated herein as Respondent's Exhibit 16.

16. At the outset of the Respondent's strike against the Charging Parties herein, said Charging Parties sent a copy of the attached letters to the persons on the list attached to each letter, said persons also being listed on General Counsel's Exhibit 3. Said letters and lists are attached hereto and incorporated herein as General Counsel's Exhibits 26 A-F inclusive.

LETTER	EXHIBIT NUMBER
20th Century Fox	26A
Paramount	26B
Screen Gems	26C
Warner Bros.	26D
MGM	26E
Disney	26F

17. At the outset of the Respondent's strike against the Association herein, Bing Crosby Productions sent a letter to Andrew Fenady, which letter is attached hereto and incorporated herein as G. C. Exhibit 27.

18. Attached hereto and incorporated herein as G. C. Exhibit 28 is a true and correct copy of a memorandum sent by Robert D. Wood, President of CBS Television Network, on or about March 28, 1973, to all persons indicated in the letter from Jack B. Purcell to Richard Fisher dated November 28, 1973, a true and correct copy of which is attached hereto and incorporated herein as G. S. Exhibit 29. Said recipients of G. C. Exhibit 28 included all persons listed as Columbia Broadcasting Systems, Inc. personnel on G. C. Exhibit 3.

19. Attached hereto and incorporated herein as G.C. Exhibit 30 is a true and correct copy of a letter sent by Billy Gold, Vice President of QM Productions, on March 5, 1973, to Robert Blees, who was then employed by QM Productions, on March 5, 1973, to Robert Blees, who was then employed by QM Productions in the capacity of Executive Story Consultant.

20. The evidence concerning the issues of the supervisory or management representative status of Robert Blees within the meaning of Sections 2(11) and 8(b)(1)

(B) of the Act shall consist of Blees' personal service contract consisting of 2 letters, attached hereto and incorporated herein as Respondent's Exhibit 17 and in addition thereto such evidence shall be deemed to include the evidence heretofore adduced in these consolidated proceedings as to the powers and duties of executive story consultants and executive story editors within the television production industry.

21. The evidence concerning the issues of the supervisory or management representative status of Hugh Benson and Roger Lewis within the meaning of Sections 2(11) and 8(b)(1)(B) of the Act shall be deemed to be the same as the evidence heretofore adduced in these consolidated proceedings as to the powers and duties of producers within the motion picture industry.

22. The evidence concerning the issues of the supervisory or management representative status of Barry Crane within the meaning of Sections 2(11) and 8(b)(1)(B) of the Act shall be deemed to be the same as the evidence heretofore adduced in these consolidated proceedings as to the powers and duties of producers and directors within the motion picture industry.

23. The evidence concerning the issues of the supervisory or management representative status of Andrew Fenady within the meaning of Sections 2(11) and 8(b)(1)(B) of the Act shall be deemed to be the same as the evidence heretofore adduced in these consolidated proceedings as to the powers and duties of executive producers, producers and story editors within the motion picture industry.

24. The name of Jack Webb may be stricken from G. C. Exhibit 3 as will all references to Webb in the testimony taken in these proceedings.

25. Respondent by press releases caused news of its fines, expulsions and other disciplinary measures to be published in editions of the Los Angeles Times, Daily Variety and the Hollywood Reporter dated June 27, 1973; the Hollywood Reporter and Daily Variety dated November 27, 1973; and the Hollywood Reporter and Daily Variety dated December 7, 1973. Said articles are attached hereto and incorporated herein as G. C. Exhibits

31 to 33, inclusive, and Respondent's Exhibits 18 to 21, inclusive, respectively.

26. All documents attached hereto and incorporated herein are true, authentic and correct copies of said documents, and may be received into evidence.

DATED at Los Angeles, California, this 17th day of December, 1973.

Date—December 17, 1973

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Date—December 18, 1973

/s/ Richard N. Fisher
RICHARD N. FISHER
Counsel for Charging Party Networks
O'Melveny & Myers
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Date—December 17, 1973

/s/ Philip R. LeVine
PHILIP R. LEVINE
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National Labor Relations Board
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Date—December 17, 1973

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UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF ADMINISTRATIVE LAW JUDGES
Washington, D.C.

Case No. 31-CB-1203-2
WRITERS GUILD OF AMERICA, WEST, INC.
and
ASSOCIATION OF MOTION PICTURE AND
TELEVISION PRODUCERS, INC.

Case No. 31-CB-1223
WRITERS GUILD OF AMERICA, WEST, INC.
and
AMERICAN BROADCASTING COMPANIES, INC.
COLUMBIA BROADCASTING SYSTEM, INC.
NATIONAL BROADCASTING COMPANY, INC.

Case No. 31-CB-1316
WRITERS GUILD OF AMERICA, WEST, INC.
and
ASSOCIATION OF MOTION PICTURE AND
TELEVISION PRODUCERS, INC.

Case No. 31-CB-1313
WRITERS GUILD OF AMERICA, WEST, INC.
and
AMERICAN BROADCASTING COMPANIES, INC.
COLUMBIA BROADCASTING SYSTEM, INC.
NATIONAL BROADCASTING COMPANY, INC.

Case No. 31-CB-1355
WRITERS GUILD OF AMERICA, WEST, INC.
and
QM PRODUCTIONS

RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

PRELIMINARY STATEMENT

Respondent attaches hereto and adopts by reference copies of its BRIEF TO ADMINISTRATIVE LAW JUDGE (Exhibit "A") and the STATEMENT OF POSITION OF RESPONDENT ON THE EFFECT OF *FLORIDA POWER & LIGHT COMPANY* v. *NLRB*, 86 LRRM 2689 OF THE UNITED STATES SUPREME COURT, (Exhibit "B").

The original hearing of these cases was concluded on June 13, 1963. The record was reopened and updated by stipulation of additional evidence and was finally closed with briefs of all parties filed in March, 1974. While the case was under submission, the Supreme Court, on June 24, 1974, handed down its decision in the *Florida Power* case, supra. The ALJ invited all parties to file briefs by August 9, 1974, with respect to the impact of that decision. (Footnote 3, ALJ Decision). The *Florida Power Statement*, adopted here, by reference, as Exhibit "B", was filed by Respondent and continues to represent its reasons for contending that *Florida* controls these cases and requires dismissal.

No purpose would be served by a rebriefing of the law of that case as applied to the record here.

Respondent's ALJ Brief fully sets forth the evidence upon which Respondent relies to bring the case within *Florida Power* and for this reason, it also is made a part of this Brief as Exhibit "B".

In light of the law as it now stands, Respondent herewith withdraws its third affirmative defense (ALJ Decision, page 7, lines 1-2; Footnote 4; page 31, lines 16 through page 33, line 30) which, in the alternative sought deferral to arbitration under the *Collyer* doctrine.)

ISSUES TO BE RESOLVED

Amended to reflect the above matters and the scope of exceptions filed by Respondent, the ALJ's statement of the major issues is accepted by Respondent. (ALJ Decision, page 6, lines 30-43). As so amended it reads as follows:

1. The alleged status of the various hyphenates as supervisors and representatives for collective bargaining and the adjustment of grievances. This was considerably litigated. However, in its brief, Respondent, as hereinafter noted, concedes that hyphenates performing many functions in dispute (other than that of story editor) are supervisors within the meaning of the Act, and may adjust grievances of employees other than writers represented by Respondent.

2. Whether various actions of alleged restraint and coercion of hyphenates by Respondent designed to compel the hyphenates to cease work for the struck employers, and Respondent's actions in charging, trying, and penalizing such members for going to work during the strike, violated Section 8(b) (1) (B) of the Act.

ARGUMENT

The case of *International Union of Operating Engineers Local No. 9*, (Shelton Pipeline and Construction, Inc.), 213 NLRB No. 93, 87 LRRM 1247, decided by four members of the Board on September 27, 1974, supports each contention Respondent has made with respect to the proper interpretation and application of *Florida Power* to the facts at issue here.

In that case, the Union had fined Collins, one of two company job superintendents, for "crossing Trades Council's picket line and working at the site." The Union's Constitution provided that members were subject to fines and expulsion "for working contrary to a declared strike." A Union official testified that a violation of Union rules occurred if a member "crosses a legal picket line." As to Collins management authority the Board found:

> "Collins was one of the two superintendents at Shelton; he reported directly to Shelton's president; he was Shelton's representative for the purpose of resolving disputes arising under the collective bargaining agreement with Respondent; he was the person designated by Shelton to receive employee com-

> plaints; he represented Shelton at a hearing before the Iowa Employment Security Commission in a matter involving unemployment compensation for a former employee; and Collins met with Roderick, one of Respondent's business representatives, and adjusted a paycheck problem involving an employee. We agree that Collins was a representative selected by Shelton 'for the purpose of . . . the adjustment of grievances." 87 LRRM 1248
>
> After crossing the picket line Collins: ". . . operated a piece of equipment. *He had previously operated such equipment during the periods when there was a shortage of manpower.*" 87 LRRM 1247 (Emphasis supplied.)
>
> The Board interpreted *Florida Power* in these words: "The Court held that the union's discipline of supervisor-members can violate Section 8(b) (1) (B) only when it adversely may affect their conduct in performing the duties of, and acting in the capacity of, grievance adjusters or collective bargainers on behalf of the employer. Also, the Court noted in the decision that Congress addressed the problem of a supervisor's loyalty to an employer but not through Section 8(b) (1) (B), but insisted through Sections 2(3), 2(11), and 14(a), which permit the employer to refuse to hire union members as supervisors, to discharge supervisors because of union activities or membership, and to refuse to engage in collective bargaining with them. In the instant case, Superintendent Collins was not engaged in performing the duties of, and acting in the capacity of, grievance adjuster or collective bargainer on behalf of the Employer when he crossed the picket line and performed struck work. 87 LRRM 1247

Only by hairsplitting distinctions can Collins' actions and situations be treated differently from the hyphenates involved here. The touchstone of the decision was *not* performance of rank-and-file work behind the picket line. It was, as Respondent argues in Exhibit "B" at page

3, whether he was disciplined because of his performance of work as a management representative under Section 8(b) (1) (B).

The work which Collins did was rank-and-file work which the Union permitted him to do "when there was a shortage of manpower." It is difficult to distinguish this work from the A to H writing which *might* be done by hyphenates if occasion required it. In any event, the Board's rationale was not in any way based upon his performance of such non-supervisory work nor did the Union fine Collins because of the performance of such work behind the picket line.

As in this case, the Union's rules condemned crossing picket lines to perform any service for the struck employer. The Board appears to accept Respondent's position that the *Oakland Mailers* type of discipline falls "within the limits of this [the Court's] test" of the scope of Section 8(b) (1) (B) in Union discipline of members who are supervisors. (Exhibit "B", page 3).

For the foregoing reasons, Respondent requests dismissal of the Complaint.

Dated: November 27, 1974.

Respectfully submitted,

/s/ Charles K. Hackler
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Los Angeles, California 90015

SUPREME COURT OF THE UNITED STATES

No. 76-1121

AMERICAN BROADCASTING COMPANIES, INC., *et al.*,
PETITIONERS

v.

WRITERS GUILD OF AMERICA, WEST, INC., *et al.*

ORDER ALLOWING CERTIORARI. Filed April 25, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is consolidated with Nos. 76-1153 and 76-1162 and a total of one and one-half hours is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 76-1153

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC., PETITIONER

v.

WRITERS GUILD OF AMERICA, WEST, INC., *et al.*

ORDER ALLOWING CERTIORARI. Filed April 25, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is consolidated with Nos. 76-1121 and 76-1162 and a total of one and one-half hours is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 76-1162

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WRITERS GUILD OF AMERICA, WEST, INC., *et al.*

ORDER ALLOWING CERTIORARI. Filed April 25, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is consolidated with Nos. 76-1121 and 76-1153 and a total of one and one-half hours is allotted for oral argument.

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976
Nos. 76-1121, 76-1153 and 76-1162

No. 76-1121
AMERICAN BROADCASTING COMPANIES, INC., and NATIONAL BROADCASTING COMPANY, INC.,
Petitioners,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

No. 76-1153
ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

No. 76-1162
NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WRITERS GUILD OF AMERICA, WEST, INCORPORATED.

Respondent Writers Guild of America, West, Inc. Brief in Opposition to Petitions for Certiorari.

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SUBJECT INDEX

	Page
Introduction	1
Statement of the Case	1
Reasons for Denying the Writs	3
A. The Purported Conflict in the Circuits Is Based on Factual Differences	3
B. The Purported Important Issues of Law Are Resolvable by the Parties	4
Conclusion	5

TABLE OF AUTHORITIES CITED

Cases

American Fed'n of Musicians v. Harrah's Club, Inc., U.S. Sup. Ct. No. 71-261	5
Beasley v. Food Fair, 416 U.S. 653 (1974)	4
Florida Power & Light Co. v. International Bhd. of Elec. Workers, Local 641, 417 U.S. 790 (1974)	3, 4
NLRB v. News Syndicate Co., 365 U.S. 695 (1961)	4

Statutes

National Labor Relations Act, Sec. 2(3)	4
National Labor Relations Act, Sec. 8(b)(1)(B)	2, 3
United States Code, Title 29, Sec. 152(3)	4
United States Code, Title 29, Sec. 158(b)(1)(B)	2, 3

Statement of the Case.

In the television film and motion picture industry there is a highly skilled employee who functions in multiple capacities. This individual is a writer who may also produce or direct, either at the same time he writes, or only on occasion. He is known as a "hyphenate," such as a "writer-producer" or a "writer-director."

As a producer or director, the hyphenate is a supervisor within the meaning of the National Labor Relations Act, having the power to employ or terminate writers and others. As a writer, he is a rank-and file-employee. His writing services are covered by the Guild's collective bargaining agreement.

During the course of a strike in 1973 by the Guild, some of the hyphenates—members of the Guild—crossed its picket lines and were disciplined.

There is substantial evidence that once across the picket lines and inside their employers' premises, the hyphenates not only produced and directed, but performed "writing services" as well, as defined in the Guild's collective bargaining agreement. And contrary to the statement in the petitions for certiorari, there was no evidence that any disciplined hyphenate—either before, during or after the strike—performed collective bargaining functions vis-a-vis the disciplining union or its members.[1] Nor, contrary to the findings of the Administrative Law Judge, was there any substantial evidence of grievance adjustment functions on the part of the hyphenates.

---

[1]The significance of this is that § 8(b)(1)(B) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(B) prohibits certain conduct where the object is to restrain or coerce an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances.

REASONS FOR DENYING THE WRITS.

A. The Purported Conflict in the Circuits Is Based on Factual Differences.

While the result reached by the court below differs from that of the Seventh and District of Columbia circuits, there are also dissimilar facts in the cases. Here, the hyphenates had no collective bargaining functions, and little if any grievances adjustment functions as to other members of the Guild.[2] Moreover, the producing or directing functions of the hyphenates included writing services as well.

In light of this, there will be difficulty in this case in getting to those legal issues the petitioners contend need to be resolved, since there is a dispute first, over whether the hyphenates are § 8(b)(1)(B)-type supervisors, and second, as to whether they performed rank-and-file work during the strike and thus were clearly subject to discipline under the rule of *Florida Power & Light Co. v. International Bhd. of Elec. Workers, Local 641*, 417 U.S. 790 (1974).

---

[2]It is not every supervisor that is covered by § 8(b)(1)(B), but only those who engage in collective bargaining or who adjust grievances. 29 U.S.C. § 158(b)(1)(B). (The Guild argued below that there was no evidence of such functions on the part of hyphenates vis-a-vis writers but in light of the Second Circuit's disposition of the case there was no need to, nor did the court reach that issue.)

B. The Purported Important Issues of Law Are Resolvable by the Parties.

The petitioners' alternate contention that certiorari should be granted to resolve important issues of law, is equally without merit. In fact, Congress gave to the employer-petitioners (the Networks and the Association) and to employers generally, more than sufficient weapons for self-help in this area.

In 1947, Congress amended the definition of "employee" in § 2(3) of the National Labor Relations Act, 29 U.S.C. § 152(3), to exclude supervisors from the Act's coverage. Since then, supervisors have not been entitled to the benefits of this law in terms of protection from either their employers or unions. *See Florida Power & Light Co. v. International Bhd. of Elec. Workers, Local 641*, 417 U.S. 790, 807-08 (1974); *Beesley v. Food Fair*, 416 U.S. 653, 656 (1974) ("Taft-Hartley amendments exclude supervisors from the protections of the Act").

The legislative scheme is to permit employers to secure their supervisors' loyalty on pain of discharge, through requiring the supervisors to sever their membership and fraternal relations with unions. *Florida Power, supra*, 417 U.S. at 807-08. Where the employer wishes to permit a supervisor to retain union connections because it is in the employer's interest (as was the case here [Network petition, A-45; Association petition, appendix, at 56]), the employer may protect the supervisor from intra-union discipline through the collective bargaining process. *See NLRB v. News Syndicate Co.*, 365 U.S. 695, 696 (1961) (collective bargaining clause protects supervisor); *Florida Power, supra*, 417 U.S. at 796 (*ibid.*). On the other hand, where, as in this case, the employer has permitted

supervisors to honor picket lines, the employer cannot complain when the supervisors refuse to cross their union's picket line, either voluntarily or by compulsion.

For the petitioners to say that "[t]his issue is . . . of paramount importance in the area of federal labor law and desperately needs to be authoritatively decided," Association petition at 11, is, under the circumstances, pure hyperbole. There is no need for demands on this Court's time simply to argue for a concession that the Association and the Networks, in a highly unique industry,[8] are either unable or unwilling to secure through collective bargaining.

Under the Congressional scheme, the issue presented is best left to the bargaining table. The result reached by the Second Circuit was correct, and that decision should not be disturbed.

Conclusion.

For these reasons, the petitions should be denied.

Respectfully submitted,

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A Professional Law Corporation,
Attorneys for Respondent, Writers Guild of America, West, Inc.

Of Counsel:
PAUL P. SELVIN.

---

[8] In *American Fed'n of Musicians v. Harrah's Club, Inc.*, U.S. Sup. Ct. No. 71-261, the Solicitor General explained why certiorari was not sought in that case, by saying that "*since labor-management relations in the entertainment industry are somewhat unique*, the present case presents an inappropriate vehicle for seeking further clarification of the difficult line between lawful primary, and unlawful secondary activity." Memorandum for the National Labor Relations Board, at 3 (emphasis added).

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976
No. 76-1121

AMERICAN BROADCASTING COMPANIES, INC., *et al.*,
Petitioner,

vs.

WRITERS GUILD OF AMERICA WEST, INC.,
Respondent.

No. 76-1153

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,

vs.

WRITERS GUILD OF AMERICA WEST, INC.,
Respondent.

No. 76-1162

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WRITERS GUILD OF AMERICA WEST, INC.,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

BRIEF FOR THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.

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SUBJECT INDEX

I. Page

Opinions Below 2

II.

Jurisdiction 2

III.

Statutes Involved 2

IV.

Question Presented 4

V.

Statement of the Case 4

A. Statement of Facts 4

B. Statement of Proceedings Below 8

VI.

Summary of Argument 9

VII.

Argument 12

A. The Union Violated Section 8(b)(1)(B) by Threatening, Fining and Otherwise Disciplining Supervisory and Executive Members of the Union Who Crossed Picket Lines to Perform their Normal Supervisory and Management Representative Functions 12

1. The Court Below Incorrectly Construed this Court's Decision in Florida Power as Permitting a Union to Discipline Supervisory Members, Who Are Management Representatives, and Who

Page

Cross the Union's Picket Line but Perform No Rank and File Struck Work .. 12

c. Florida Power Was Tried, Briefed, Argued and Considered by the Board, the Court of Appeals and this Court as Raising the Limited Issue of whether, during a Strike a Union May Impose Discipline on Supervisory Members Who Perform Rank and File Struck Work without Violating Section 8(b)(1)(B) 14

b. Since Florida Power, the Board Has Consistently and Correctly Construed the Court's Holding to Permit Union Discipline of Supervisory Members only where those Members Perform Rank and File Struck Work 17

2. The Union's Discipline of Supervisory and Executive Members Who Worked during the Strike Is Violative of the Plain Meaning of Section 8(b)(1)(B) 20

3. The Court below Should Have Accepted the Board's Application of the "Effect Test" to the Union's Conduct because It Is Consistent with the Standard Established by this Court in Florida Power 25

Page

B. The Factual Issues Raised by the Union in Its Opposition to the Petitions for Certiorari and in the Court Below Were Correctly Decided by the Board 27

1. The Board Correctly Found that the Supervisory and Executive Members of the Union Employed by the Employer Members of the Association Are Management Representatives within the Meaning of Section 8(b)(1)(B) of the Act 28

2. The Board Correctly Found that the Supervisory and Executive Members of the Union Employed by the Employer Members of the Association Performed No Rank and File Struck Work 29

VIII.

Conclusion 31

TABLE OF AUTHORITIES CITED

Cases

Page

Bakery and Confectionary Workers International Union of America, Local Unions 24 and 119 and Food Employers Council, Inc., 216 NLRB 917 (1975) 26

Chicago Typographical Union No. 16 and Hammond Publishers, Inc., 216 NLRB 903 (1975) 11, 17, 25, 26

Florida Power & Light Co. v. International Brotherhood of Electrical Workers Local 641, 417 U.S. 790 (1974) .....9, 10, 12, 13, 15, 16, 17 .....18, 20, 21, 22, 24, 25, 31

Hammond Publishers, Chicago Typographical Union No. 16 v. National Labor Relations Board, ... F.2d ....., Association Pet. App. B., p. 74 (1976) 18, 25

International Brotherhood of Electrical Workers, AFL-CIO, and Local 134, International Brotherhood of Electrical Workers, AFL-CIO (Illinois Bell Telephone Company) and Bell Supervisors Protective Association (Not a Labor Organization), 192 NLRB 85 (1971) 14, 15, 20

International Brotherhood of Electrical Workers, AFL-CIO, and Local 134, International Brotherhood of Electrical Workers, AFL-CIO v. National Labor Relations Board, 487 F.2d 1143 (1973) 15, 22

International Brotherhood of Electrical Workers System Council U-4 et al. and Florida Power & Light Company, 193 NLRB 30 (1971) 14

Page

International Organization of Masters, Mates and Pilots v. National Labor Relations Board, 486 F.2d 1271 (CADC, 1973) 29

International Union of Operating Engineers, Local No. 9, AFL-CIO (Shelton Pipeline & Construction, Inc.) and Robert Collins, 213 NLRB 679 (1974) 17

Local No. 492, United Brotherhood of Carpenters and Joiners of America and Keystone Conservation Services, Inc., 211 NLRB 62 (1974) 17

Meat and Provision Drivers Union Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al., and Food Employers Council, 224 NLRB No. 40 (1976) 18

National Labor Relations Board v. Hearst Publications, Inc., 322 U.S. 111 (1944) 32

New Mexico District Council of Carpenters (A. S. Horner, Inc.), 177 NLRB 500 (1969), enf'd. 454 F.2d 1116 (CA 10, 1972) 11, 22, 23, 24

New York Typographical Union No. 6 International Typographical Union AFL-CIO and Daily Racing Form, a subsidiary of Triangle Publications, Inc., 206 NLRB 294 (1973) 12, 17, 19

New York Typographical Union No. 6 International Typographical Union AFL-CIO and Daily Racing Form, a subsidiary of Triangle Publications, Inc., 216 NLRB 896 (1975) 12, 20, 24, 26, 29

Page

San Francisco-Oakland Mailers' Union No. 18, International Typographical Union (Northwest Publications, Inc.), 172 NLRB 2173 (1968) 20, 21, 28

Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union and Associated Food Stores, Inc., 220 NLRB 809 (1975) 18, 24

Wisconsin River Valley District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Skippy Enterprises, Inc., 218 NLRB 1063 (1975) 18, 29

Wisconsin River Valley District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO v. National Labor Relations Board, 532 F.2d 47 (CA 7, 1976) 18

Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc., Association Pet. App. A, pp. 6-71 17

Radio Officers Union v. National Labor Relations Board, 347 U.S. 17 (1954) 26, 27

Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474 (1951) 27

Statutes: Page

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 USC 151, et seq.)

Section 2(3) 2, 19

Section 2(11) 3, 5

Section 8(b)(1)(B) .....3, 4, 5, 8, 9, 10, 11, 12 ....13, 14, 15, 16, 19, 20, 21, 22, 23, 25, 28, 29

Section 10(e) 3

Section 14(a) 19

United States Code, Title 28, Sec. 1254(1) 2

United States Code, Title 29, Sec. 160(e) 27

Miscellaneous:

Brief for the International Brotherhood of Electrical Workers, AFL-CIO in Florida Power & Light Co. v. International Brotherhood of Electrical Workers Local 641, 417 U.S. 790 (1974) 15

IN THE

Supreme Court of the United States

October Term, 1976
No. 76-1121

AMERICAN BROADCASTING COMPANIES, INC., *et al.*,
Petitioner,

vs.

WRITERS GUILD OF AMERICA WEST, INC.,
Respondent.

No. 76-1153

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,

vs.

WRITERS GUILD OF AMERICA WEST, INC.,
Respondent.

No. 76-1162

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WRITERS GUILD OF AMERICA WEST, INC.,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

BRIEF FOR THE ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.

I.
OPINIONS BELOW.

The opinion in the Court of Appeals (Association Pet. App. A, pp. 1-6)[1] is reported at 547 F.2d 159. The decision and order of the National Labor Relations Board (Association Pet. App. A, pp. 6-71) is reported at 217 NLRB 957.

II.
JURISDICTION.

The judgment of the Court of Appeals was entered on November 22, 1976. The petition for a writ of certiorari in No. 76-1121 was filed on February 14, 1977. The petitions in Nos. 76-1153 and 76-1162 were filed on February 22, 1977. The petitions were granted on April 25, 1977.[2] The jurisdiction of this Court rests on 28 USC Section 1254(1).

III.
STATUTES INVOLVED.

The relevant provisions of the National Labor Relations Act, as amended (61 Stats. 136, 73 Stats. 519, 29 USC Section 151, *et seq.*), are as follows:

Section 2. When used in this Act * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees

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[1]References to the Appendix to the Petition for Writ of Certiorari on behalf of the Association of Motion Picture & Television Producers, Inc., will be referred to as "Association Pet. App." References to the printed appendix containing those portions of the record below which have been designated by the parties will be referred to as "App.".

[2]By order of the Court the time for the filing of opening briefs was extended to and including July 25, 1977.

of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of an unfair labor practice . . . but shall not include . . . any individual employed as a supervisor. . . .

* * *

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 8 * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances. . . .

Section 10 * * *

(e) The Board shall have power to petition any court of appeals of the United States . . . for the enforcement of such order. . . . The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

IV.
QUESTION PRESENTED.

Whether a labor organization violates Section 8(b)(1)(B) of the National Labor Relations Act when it threatens to discipline and disciplines supervisory members, who are management representatives, and who cross a picket line during a strike and perform only their normal supervisory and management representative functions.

V.
STATEMENT OF THE CASE.

A. STATEMENT OF FACTS.

Commencing in March, 1973, Respondent Writers Guild of America West, Inc. (hereinafter "Union") struck the employer members of Petitioner Association of Motion Picture and Television Producers, Inc.[3] (hereinafter "Association") (Association Pet. App. A, p. 18).

At the time of the strike, a number of the Union's members were employed by these employers as executive producers, producers, associate producers, directors, story editors, research directors and in other executive capacities.[4] (Association Pet. App. A, p. 19). It is

[3]The Union also struck the American Broadcasting Companies, Inc., the Columbia Broadcasting System, Inc., the National Broadcasting Company, Inc., and QM Productions. While the acts that were found by the Board to be violative of Section 8(b)(1)(B) as to these employers parallel those directed by the Union against the employer members of the Association, this brief is filed only on behalf of the Association.

[4]In the motion picture and televison industry, it is not unusual to find an individual who is competent to perform more than one function. Thus an actor may also be a director

clear from the record that these members were, at all times relevant, supervisors within the meaning of Section 2(11) of the Act.[5] (Association Pet. App. A, pp. 8; 22-27). It is equally clear that these members were also management representatives within the meaning of Section 8(b)(1)(B) of the Act.[6] (Association Pet. App. A, pp. 8; 22-27).

The Union endeavored to prevent its supervisory and executive members from performing any services whatsoever for the struck employers. (Association Pet. App. A, pp. 8; 32-34; 39-40). Toward this end, the Union reactivated all of its members who had gone on withdrawn status within the prior two years. (App. pp. 160, 567). The Union also adopted and implemented a policy whereby it would not permit any member to resign until at least six months after the conclusion of collective bargaining, which policy was widely publicized. (App. pp. 149-150). Finally, the Union adopted thirty-one Rules for Conduct of Members during a Strike, which rules forbade members from working for the struck employers "regardless

or a writer, or a producer may also be an actor or a writer. Such multi-talented individuals are known as "hyphenates". It is with the hyphenate members of the Union employed in supervisory and management representative capacities by the employer members of the Association—those executives, executive producers, producers, associate producers, directors, research directors and story editors, who are also writers and Union members—that this case is concerned. (Association Pet. App. A, p. 19).

[5]App. pp. 30; 32-34; 39; 44; 46-49; 51-54; 63-64; 72-73; 77; 89; 91; 100; 105; 107-109; 120-124; 130-131; 134-135; 146; 152; 155; 164; 169.

[6]App. pp. 31-32; 40-42; 45-46; 54; 62-64; 73-74; 77-79; 93-94; 100-105; 107-109; 124-128; 132; 135-136; 145-146; 152-153; 155-156; 159-160.

of the capacity in which they [were] working . . .'". (Association Pet. App. A, pp. 8; 32-34; App. p. 19, ¶24). By means of personal contact, meetings, mailings and publicity the Union threatened and emphasized that these rules would be enforced against supervisory and executive members, even if they performed no rank and file struck work whatsoever.[8] (Association Pet. App. A, pp. 8; 34-36).

At the outset of the strike, the employer members of the Association directed their supervisory and executive employees to continue to perform their supervisory and management representative functions, not-

[7]The strike rules as adopted provided, in part, that:

"12. All members are prohibited from crossing a picket line which is established by the Guild at any entrance to the premises of a struck producer.

• • •

14. Members may not accept from a struck producer for reading, perusal, study or any other purpose any sample script, format, presentation or literary material of any nature which might have any actual or potential connection with future employment of said members as writers *or otherwise* even though such services are to begin after the conclusion of the strike.

• • •

19. A member may not, during the course of a strike, conduct negotiations with a struck producer for financing the production of any of his literary material or scripts or for his participation in such production *in any capacity*.

• • •

24. *All members, regardless of the capacity in which they are working,* are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts solely to writing.

• • •

30. *No member shall work with any individual, including a writer-executive who has been suspended from Guild membership by reason of his violation of strike rules, or who has been found by the Council to have violated strike rules,* in the event no disciplinary action was *instituted against such person*". (Emphasis added). (App. pp. 15-20).

[8]App. pp. 88; 136-138; 150-151; 156-158; 191-194; 199-201; 219-221; 293-298.

withstanding any Union picket line or any other attempt by the Union to prevent them from performing such functions. (Association Pet. App. A, pp. 37-38; App. pp. 473-530; 575-576).

A number of the supervisory and executive members of the Union refused to work during the strike. However, despite the Union's threats and intimidation, others crossed the picket lines to perform their normal supervisorial and management representative functions related to numerous bargaining units which were neither represented by the Union nor on strike.

As a result, commencing on April 6, 1973, and continuing throughout the strike the Union issued Notices of Disciplinary Hearings and charges against various supervisory and executive members, charging them with violating certain strike rules and ordering them to appear before a Union Disciplinary Board.[9] (Association Pet. App. A, pp. 8; 21; 40). None of these Notices contained any allegations that the charged members had engaged in any rank and file struck work during the strike.

Pursuant to these Notices, the Union held intra-union disciplinary hearings. At these hearings, the Union took the position that whether or not the supervisory and executive members had performed rank and file struck work was immaterial. (App. pp. 160-161). No proof of the performance of rank and file struck work by any of the charged members was elicited at their disciplinary hearings. (Association Pet. App. A, pp. 8; 39-40). Indeed, all of the evidence and testimony herein was to the effect that the supervisory and executive members of the Union were neither asked

[9]App. pp. 299-307; 311-313; 398-440; 450-452; 456-458.

to write, nor in fact performed any rank and file struck work during the strike.[10] Nonetheless, the Union meted out discipline against ten such members ranging from a $100 fine to expulsion and a fine of $100,000. (Association Pet. App. A, pp. 8; 41-42; App. pp. 441-449; 453-455).

B. STATEMENT OF PROCEEDINGS BELOW.

In its Decision and Order, the Board, Member Fanning dissenting, adopted and affirmed the findings of the Administrative Law Judge that executive producers, producers, associate producers, directors and story editors employed by the employer members of the Association were supervisors and management representatives within the meaning of the National Labor Relations Act. (Association Pet. App. A, pp. 7; 22-27). Expanding upon the findings of the Administrative Law Judge, the Board found that executives and research directors so employed were also supervisors and management representatives. (Association Pet. App. A, pp. 7-8). The Board adopted and affirmed the findings of the Administrative Law Judge that during the course of the strike these supervisory and executive members of the Union performed no rank and file struck work, but rather performed only their normal supervisory and management representative functions. (Association Pet. App. A, pp. 7; 28-32; 55-56). Finally, the Board affirmed the Administrative Law Judge's conclusion that by its threats to discipline and discipline of supervisory and executive members the Union violated Section 8(b)(1)(B) of the National Labor Relations Act, and sustained the complaints' alleged violations of that section, *in toto*. (Association Pet. App. A, p. 9).

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[10]App. pp. 74; 76; 99; 139-140; 160-161.

The Court of Appeals for the Second Circuit, Judge Moore dissenting, relied primarily upon the reasons set forth in Member Fanning's dissent and denied enforcement of the Board's Order on the basis "that the Board as a matter of law incorrectly applied Section 8(b)(1)(B) to the instant case . . .". (Association Pet. App. A, pp. 2-3).

VI.

SUMMARY OF ARGUMENT.

Section 8(b)(1)(B) of the National Labor Relations Act makes it an unfair labor practice for a union "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances". This Court, in *Florida Power & Light Co. v. International Brotherhood of Electrical Workers Local 641*, 417 U.S. 790 (1974), held that this statutory provision was not violated by a union that disciplined its supervisory members for performing rank and file struck work.

In the case now before the Court, the Board, affirming the decision of the Administrative Law Judge, held that the Union did violate Section 8(b)(1)(B) by threatening to discipline and disciplining supervisory and executive members who, during a strike, performed only their normal supervisory and management representative functions and performed no rank and file struck work. The Court of Appeals for the Second Circuit denied enforcement of the Board's Order "as a matter of law". In so doing, the Court relied solely on the interpretation placed on *Florida Power* by Board Member Fanning in his dissenting opinion.

Member Fanning construed *Florida Power* to hold that union discipline of supervisory members who work during a strike is totally unregulated by Section 8(b)(1)(B).

Florida Power does not, however, support the construction placed on it by Member Fanning and the Court below. It was tried, briefed, argued and considered by the Board, the Court of Appeals and this Court as raising the very limited issue of whether a union may impose discipline on supervisory members who perform rank and file work during a strike without violating Section 8(b)(1)(B).

Since *Florida Power*, the Board has properly read this Court's holding to immunize union discipline of supervisory members from the reach of Section 8(b)(1)(B) only if it is threatened or administered for the performance of rank and file struck work. The Board's interpretation of *Florida Power* has been affirmed by the Courts of Appeal for the District of Columbia and Seventh Circuits.

As found by the Administrative Law Judge in the present case, a finding adopted and affirmed by the Board, the Union by threatening to discipline and disciplining executives, executive producers, producers, associate producers, directors, research directors and story editors, who during the strike performed only their normal supervisory and management representative functions, violated the plain meaning of Section 8(b)(1)(B).

It was the announced purpose of the Union, in adopting its strike rules prohibiting any kind of work, threatening to discipline, and disciplining supervisory and executive members, to shut down the entire motion

picture and television industry during the strike. The Union sought to achieve this result by depriving employer members of the Association of supervisory and executive personnel who during the strike performed only their normal supervisory and management representative functions related to numerous bargaining units which were neither represented by the Union nor on strike.

Compliance by the supervisory and executive members with the Union's strike rules would have required them to quit their jobs as executives, executive producers, producers, associate producers, directors, research directors and story editors thereby restraining and coercing their struck employers in the selection of these members as representatives for the purposes of collective bargaining or the adjustment of grievances in direct violation of Section 8(b)(1)(B). *New Mexico District Council of Carpenters (A. S. Horner, Inc.)*, 177 NLRB 500 (1969), enf'd. 454 F.2d 1116 (CA 10, 1972).

As a direct, intended and foreseeable result of the Union's threats of discipline and discipline, a number of its supervisory and executive members actually refused to work during the strike. In such circumstances it was reasonable for the Board to conclude that the Union's actions would also have a similar future effect upon them in their roles as grievance adjusters and collective bargaining negotiators, which also constitutes a violation of Section 8(b)(1)(B). *Chicago Typographical Union No. 16 and Hammond Publishers, Inc.*, 216 NLRB 903 (1975).

The Board's findings that the threatened and disciplined supervisors and executives were management representatives within the meaning of Section 8(b)(1)

(B) and were not disciplined for the performance of rank and file struck work, are fully supported by the evidence on the record considered as a whole as applied to relevant Board and judicial precedent.

VII.
ARGUMENT.

A. THE UNION VIOLATED SECTION 8(b)(1)(B) BY THREATENING, FINING AND OTHERWISE DISCIPLINING SUPERVISORY AND EXECUTIVE MEMBERS OF THE UNION WHO CROSSED PICKET LINES TO PERFORM THEIR NORMAL SUPERVISORY AND MANAGEMENT REPRESENTATIVE FUNCTIONS.

1. The Court Below Incorrectly Construed this Court's Decision in Florida Power as Permitting a Union to Discipline Supervisory Members, Who Are Management Representatives, and Who Cross the Union's Picket Line but Perform No Rank and File Struck Work.

The Court of Appeals for the Second Circuit, relying on this Court's decision in *Florida Power, supra,* denied enforcement of the Board's Order "for substantially the reasons set forth in the dissenting opinion of Board Member John H. Fanning. . .". (Association Pet. App. A, p. 3). Member Fanning's dissent, in turn, is based upon his lengthy dissenting opinion in *New York Typographical Union No. 6 International Typographical Union AFL-CIO and Daily Racing Form, a subsidiary of Triangle Publications, Inc.,* 216 NLRB 896 (1975).[11] (Association Pet. App. A, p. 10).

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[11]Reconsidering *New York Typographical Union No. 6 International Typographical Union AFL-CIO and Daily Racing Form, a subsidiary of Triangle Publications, Inc.,* 206 NLRB 294 (1973).

There, Member Fanning concluded that a Union may discipline supervisory and management representative members who work during a strike, irrespective of the nature of the services they perform:

> "*I believe union discipline of all members for conduct related to and during a strike remains unregulated by Congress.* . .". (Emphasis added). *Id.* at p. 902.

Member Fanning, purportedly relying on *Florida Power,* reasoned that whether or not the discipline of supervisory and management representative members of a union violates Section 8(b)(1)(B) depends on the Union's motive in imposing discipline. He distinguished between discipline imposed because of the manner in which a supervisor or management representative performs a collective bargaining or grievance adjustment function, which he considered properly proscribed, and discipline for working during a strike:

> ". . . in a strike situation, what the supervisor does behind the picket line is, in the ordinary case, and most assuredly in this one, completely irrelevant. The union's interest is quite simply to preserve strike solidarity. It is specious to think that the union cares an iota whether its member . . . is adjusting a grievance, operating a press, or engaged in any other activity while his fellow members man a picket line. It cares only that he is working during a strike". *Id.* at p. 899.

It is submitted that Member Fanning's analysis and conclusions find no support in this Court's *Florida Power* decision.

a. Florida Power Was Tried, Briefed, Argued and Considered by the Board, the Court of Appeals and this Court as Raising the Limited Issue of whether, during a Strike a Union May Impose Discipline on Supervisory Members Who Perform Rank and File Struck Work without Violating Section 8(b)(1)(B).

In *International Brotherhood of Electrical Workers, AFL-CIO, and Local 134, International Brotherhood of Electrical Workers, AFL-CIO (Illinois Bell Telephone Company) and Bell Supervisors Protective Association (Not a Labor Organization)*, 192 NLRB 85 (1971), the Union advised its supervisory members "that it would be the policy of the Union to discipline any foremen who performed rank-and-file work during the strike". *Id.* at p. 85. The Board, affirming the Administrative Law Judge, held that the Union "by imposing on foremen [footnote omitted] possessing the power to adjust grievances fines for crossing the Respondent Local's picket line and performing struck work, violated Section 8(b)(1)(B) of the Act".[12] *Id.* at p. 86. Similarly, in *International Brotherhood of Electrical Workers System Council U-4 et al. and Florida Power & Light Company*, 193 NLRB 30,

[12]See also Member Fanning's dissent, wherein he stated: "*Here the supervisors* were not fined because they gave directions to the work force, interpreted the collective-bargaining agreement, adjusted grievances, or performed any other function generally related to supervisory activities . . . . They *were fined because they performed production work in the bargaining unit during a strike. Their Employer sought to use them,* not in the direction of the employees who had not gone on strike or of replacements for strikers, but *to replace the strikers themselves.* In short, he assigned them to work as employees within the meaning of Section 2(3) of the Act, not as supervisors within the meaning of Section 2(11) of the Act". (Emphasis added). *Id.* at p. 88.

31 (1971), the Board held "that the Respondent Local Unions severally violated Section 8(b)(1)(B) of the Act by trying, fining and/or expelling or suspending from union membership *for performing struck work,* certain supervisors. . .". (Emphasis added).

In its *en banc* decision in *International Brotherhood of Electrical Workers, AFL-CIO, and Local 134, International Brotherhood of Electrical Workers, AFL-CIO v. National Labor Relations Board*, 487 F.2d 1143 (1973), the Court of Appeals for the District of Columbia posed the issue presented by both *Illinois Bell* and *Florida Power* as follows:

> "Does a union commit an unfair labor practice under Section 8(b)(1)(B), 29 USC §158(b)(1)(B) (1970), by disciplining supervisor-members for crossing a picket line and performing rank-and-file struck work during a lawful economic strike against the Company". *Id.* at p. 1147.

When *Florida Power* came before this Court, Justice Stewart writing for the majority carefully framed the issue in virtually identical terms:

> "*The question to be decided is whether the unions committed unfair labor practices under §8(b)(1)(B) when they disciplined their supervisor-members for crossing the picket lines and performing rank and file struck work* during lawful economic strikes against the companies".[13] (Emphasis added). 417 U.S. at 792.

[13]Significantly, Respondent Unions in their brief on the merits in this Court acknowledged that discipline of supervisors who during a strike cross a picket line to perform only their normal supervisory and management representative functions is proscribed. See Brief for the International Brotherhood of Electrical Workers, AFL-CIO, at pp. 29-30, 37-38.

The Supreme Court majority noted:

> "In *Illinois Bell . . . . Those who* did work during the strike but *performed only their regular [supervisory and managerial] duties were not disciplined* by the union. *In Florida Power . . . the union did not discipline those who did so only to perform their normal supervisory functions*". (Emphasis added). 417 U.S. at p. 812, n. 22.

The holding of the Court in *Florida Power* was as narrow as the issue posed:

> ". . . *we hold that the respondent unions did not violate Section 8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing rank-and-file struck work*".[14] (Emphasis added). *Id.* at p. 813.

The narrowness of the decided issue was confirmed by Justice White, writing for the minority:

> "I do not read the Court to say that §8(b)(1)(B) would allow a union to discipline supervisor-members for performing supervisory or management functions, *as opposed to customary rank-and-file work*, during a labor dispute". (Emphasis added). *Id.* at p. 815, n. 2.

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[14]See also 417 U.S. at p. 48, n. 16 where the Court stated: "*To hold that union discipline of supervisor-members for performing rank-and-file struck work is not proscribed* by §8(b)(1)(B) of the Act is not to hold that such discipline is expressly permitted by §8(b)(1)(A) of the Act . . . *The Act*, therefore, *neither protects nor prohibits union discipline of supervisor-members for engaging in rank-and-file struck work*". (Emphasis added).

b. Since Florida Power, the Board Has Consistently and Correctly Construed the Court's Holding to Permit Union Discipline of Supervisory Members only where those Members Perform Rank and File Struck Work.

The Board's interpretation of *Florida Power* is most clearly expressed in its decision in *Triangle Publications, supra,* at p. 897:

> ". . . nothing in the Supreme Court's *Florida Power* decision dictates the conclusion urged by the dissent, that a union has a right to discipline a supervisor-member who performs *any* function during a strike. [Footnote omitted]. The most that can be said is that the Court sanctioned the disciplining of supervisor-members who perform rank-and-file struck work during a strike. In this same vein, it is apparent to us that it was the performance of rank-and-file struck work by supervisor-members which the Supreme Court referred to as strike breaking for which union sanctions could be incurred. [Footnote omitted]". (Emphasis in original).

See also *Local No. 492, United Brotherhood of Carpenters and Joiners of America and Keystone Conservation Services, Inc.,* 211 NLRB 62 (1974); *International Union of Operating Engineers, Local No. 9, AFL-CIO (Shelton Pipeline & Construction, Inc.) and Robert Collins,* 213 NLRB 679 (1974); *Chicago Typographical Union No. 16 and Hammond Publishers, Inc., supra; Writers Guild of America, West, Inc. and Association of Motion Picture and Television Producers, Inc.,* Association Pet. App. A, pp. 6-71; *Wisconsin River Valley District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-*

CIO and Skippy Enterprises, Inc., 218 NLRB 1063 (1975); *Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union and Associated Food Stores, Inc.*, 220 NLRB 809 (1975); *Meat and Provision Drivers Union Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al. and Food Employers Council*, 224 NLRB No. 40 (1976).

The Board's construction of *Florida Power* has been adopted by the Court of Appeals for the Seventh Circuit in *Wisconsin River Valley District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO v. National Labor Relations Board*, 532 F.2d 47 (CA 7, 1976) and by the Court of Appeals for the District of Columbia in *Hammond Publishers, Chicago Typographical Union No. 16 v. National Labor Relations Board*, ... F.2d ..... (Association Pet. App. B, p. 74). While the court rendered no opinion in *Hammond*, its view of the matter is clearly expressed in its *en banc* decision in *Florida Power*:

> "When a supervisor acts as such he is a representative of management, and as such he should be immune from union discipline. *The unions participating in the present cases conceded* as much at oral argument when they agreed *that when a supervisor crosses a picket line to perform supervisory work he remains immune from discipline*". (Emphasis added). 487 F.2d at p. 1157.

In sum, the limited teaching of *Florida Power* is that a union may with impunity discipline supervisory members for the performance of rank and file struck work. However, the Court below, by adopting Member Fanning's reasoning, would read the language of *Florida Power* in a much broader fashion. Focusing

on the Court's discussion of the interplay between Sections 2(3), 8(b)(1)(B) and 14(a) of the Act, Member Fanning concluded that the loyalty an employer may demand from a supervisor during a strike is controlled by Sections 2(3) and 14(a) and therefore not protected by Section 8(b)(1)(B). *Triangle Publications, supra*, at p. 900. Accordingly, Member Fanning reasoned that *all* strike related discipline of supervisors is outside of the purview of Section 8(b)(1)(B).

This broad reading of Section 8(b)(1)(B) was rejected by the Court of Appeals for the District of Columbia in its *en banc* decision in *Florida Power:*

> "This is not to say, of course, that by permitting his supervisors to join unions the employer completely waives his right to their loyalty. Even if he permits them to join unions, Section 8(b)(1)(B), as interpreted by *Oakland Mailers* and *Meat Cutters*, immunizes them from union discipline imposed for the manner in which they perform their supervisory functions". 487 F.2d at p. 1170.

In affirming the Court of Appeals' *en banc* decision, the Supreme Court voiced no disagreement with this analysis. In fact, it is not unreasonable to assume that the Court approved it. Otherwise, there would have been little point in the Court's repeated emphasis of the fact that the disciplined supervisory members of the union acted as strike breakers and performed rank and file struck work. 417 U.S. at pp. 793-794, 796-797, 802, 805-806, 813.

In *Florida Power*, the unions successfully argued that such strike breaking activity should constitute a limitation to the protection afforded employers by Section 8(b)(1)(B) against union discipline of manage-

ment representatives. Member Fanning himself recognized in *Illinois Bell, supra* at p. 88, n. 12 that:

> "if the Employer had requested his supervisors to perform their normal supervisory functions in the direction of replacements or other workers during the strike, we would have a different situation".

The Court of Appeals for the Second Circuit, however, would construe Section 8(b)(1)(B) as totally inapplicable during a strike—thereby making the exception, carved out in *Florida Power*, the rule.

2. The Union's Discipline of Supervisory and Executive Members Who Worked during the Strike Is Violative of the Plain Meaning of Section 8(b)(1)(B).

In *Triangle Publications*, 216 NLRB at p. 898, Member Fanning stated that the Board, in a line of cases beginning with *San Francisco-Oakland Mailers' Union No. 18, International Typographical Union (Northwest Publications, Inc.)*, 172 NLRB 2173 (1968), has improperly:

> "expanded the reach of Section 8(b)(1)(B). [Footnote omitted]. Union discipline of supervisor members became proscribed not merely when the nature of the dispute between union and supervisor involved the latter's performance of particular collective-bargaining or grievance adjustment functions but in all settings in which the supervisor has engaged in *any* supervisory or management function".[18] (Emphasis in original).

[18]It should be noted that Member Fanning participated in the unanimous decision in *Oakland Mailers*.

This Court did not expressly deal with this line of cases in *Florida Power*. As to *Oakland Mailers*, the Court majority assumed without deciding that it fell "within the outer limits" for the application of Section 8(b)(1)(B) under the test established by the Court. 417 U.S. at p. 805.

It is equally unnecessary in this case to decide whether *Oakland Mailers* comes within the purview of this section. As found by the Administrative Law Judge—a finding adopted and affirmed by the Board—the Union's activities in the case now before the Court clearly and directly violated the plain meaning of Section 8(b)(1)(B):

> *"It is clear that Respondent's action in this case violated the plain meaning of the statute without the necessity of resort to statutory exegesis.* To illustrate: A person performing the function of a director acts in a managerial or supervisory capacity, which normally includes the adjustment of grievances of actors, actresses, craft employees and others. One occupying the position of a producer normally has a similar capacity and similar duties with respect to employee grievances. In addition, if the film is being shot on distant location the producer has authority to negotiate on the spot agreements with local unions. Thus *when Respondent prevented or sought to prevent, such hyphenate members from going to work in their managerial and supervisory capacities as producers and directors during the strike, Respondent obviously coerced and restrained their employers in the selection of those specific producers and directors 'for the purpose of collective bargaining*

and the adjustment of grievances of employees working during the strike within the plain meaning of the statute. Similarly, those persons employed as story editors or in like classifications perform executive functions normally, and appear to have done so during the strike . . . Respondent, *by coercing or restraining persons in these classifications from going in to do their normal work thereby actually coerced and restrained their employers from selecting those persons* as the employers' representatives for the adjustment of grievances and for collective bargaining during the strike". (Emphasis added). (Association Pet. App. A, pp. 7; 58).

It is clear that the instant case is controlled by the Board's decision in *New Mexico District Council of Carpenters (A.S. Horner, Inc.), supra.*

The Court of Appeals for the District of Columbia in its *en banc* decision in *Florida Power* recognized *Horner* as falling "close to the original rationale of §8(b)(1)(B) which was to permit the employer to keep the bargaining representative of his own choosing". 487 F.2d at p. 1155, n. 19. The Court recognized the clear factual distinction between *Florida Power*, where there was no present effect on the employer, *Id.* at p. 1153, and cases such as *Horner*.

In *Horner*, the union fined a supervisory member because he refused to accede to the union's demand that he cease working for a company which did not have a contract with the union. The union had "pulled off" its members from the job, thereby in effect striking the company. 177 NLRB at p. 502, n. 7. The Board concluded that the union's disciplinary action violated

Section 8(b)(1)(B) because compliance by the supervisor with the union's demand would have required him to quit his job with the company and hence would have the effect of immediately depriving the company of the services of its selected collective bargaining or grievance adjustment representative. *Id.* at p. 502.

Applying the *Horner* rationale to the case at bar, it is clear that the Union's actions directly violated Section 8(b)(1)(B). It was the avowed purpose of the Union to shut down the entire motion picture and television industry by depriving employer members of the Association of key supervisory and executive personnel—personnel who during the course of the strike were required to perform and performed only their normal supervisory and management representative functions related to numerous bargaining units which were neither represented by the Union nor on strike. The Union sought to achieve this end by reactivating members who had gone on withdrawn status, and by prohibiting members from resigning their Union membership. The Union also adopted numerous strike rules, including a black list rule, forbidding members from working for the struck employers in *any capacity* whatsoever.

Compliance by the Union's supervisory and executive members with these strike rules would have required them to quit their jobs as executives, executive producers, producers, associate producers, directors, research directors and story editors (General Counsel's Exhibit 16 L, Ex. 5) thereby immediately depriving their struck employers of their services as representatives for the purposes of collective bargaining and the adjust-

ment of grievances. Indeed, as a direct and foreseeable result of the Union's actions a number of the supervisory and executive members refused to work during the strike, thereby *actually* depriving their employers of their management representative services.

While neither the Administrative Law Judge nor the Board cited *Horner* in the case now before the Court, the Board has relied on *Horner* in other cases where supervisors were disciplined for performing their normal supervisory and management representative functions during a strike. ***Warehouse Union Local 6, supra; Wisconsin River Valley District Council of Carpenters, supra.***

In his dissent in *Triangle Publications, supra* at p. 900 Member Fanning stated:

> "My reading of *Florida Power* compels the further conclusion that the operative test in establishing a violation of Section 8(b)(1)(B) is whether it is reasonable to conclude that the union's discipline may adversely affect the disciplined supervisors' *future* performance of two distinct functions, grievance adjustment and collective-bargaining representation". (Emphasis added).

Member Fanning and, therefore, the Court below, apparently totally overlooked the all-important fact that in the case now before this Court, unlike in *Florida Power*, the Union's threats and acts were intended to have and did in fact have the *present* effect of depriving the employers of the right to select their representatives for collective bargaining or the adjustment of grievances. As to those supervisors and executives who refused to cross the Union's picket line, any speculation as to future effect thereby becomes wholly unnecessary.

3. The Court below Should Have Accepted the Board's Application of the "Effect Test" to the Union's Conduct because It Is Consistent with the Standard Established by this Court in Florida Power.

In *Florida Power*, this Court decided that the applicability of Section 8(b)(1)(B) depends on the *effect* of a union's discipline upon a supervisor's conduct as a management representative:

> ". . . a union's discipline of one of its members who is a supervisory employee can constitute a violation of §8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer". 417 U.S. at pp. 804-805.

Based upon this construction, the Board has developed its "effect test", first enunciated in *Hammond Publishers, supra.* (Association Pet. App. A, p. 9, n. 6). There the Board decided that under *Florida Power* the applicability of Section 8(b)(1)(B) turns:

> ". . . on a determination . . . of the reasonable effect of that discipline on the supervisor's activities as an 8(b)(1)(B) representative". 216 NLRB at p. 903.

The Board reasoned that:

> "The further question of 'when that discipline may adversely affect the supervisor's conduct . . .' clearly depends on an analysis of the activity engaged in by the supervisor during the period for which the discipline is imposed . . .". *Id.* at p. 904.

See also *Triangle Publications, supra; Bakery and Confectionary Workers International Union of America, Local Unions 24 and 119 and Food Employers Council, Inc.*, 216 NLRB 917 (1975).

Discussing the application of the effect test, the Board in *Hammond Publishers* noted:

> "The application of the effect test [of Florida Power] is relatively straightforward in extreme situations *where the disciplined supervisor has engaged* either *only in the performance of supervisory activities (not limited to grievance adjustment or collective bargaining)*, or *only* in the performance of rank-and-file struck work [Footnote omitted]. In the former *there is clearly a violation since it is reasonably likely that an adverse effect will carry over to the supervisor's performance of his 8(b)(1)(B) duties where he is disciplined after having engaged only in the performance of supervisory duties*". *Id.* at p. 904.

Where, as in the case at bar, the Union's threats and discipline had as their intended, actual and immediate effect the refusal by a number of supervisory and executive members to work during the strike and to perform their normal supervisory and management representative functions, it was clearly reasonable for the Board to conclude that these actions would also have a similar future effect.

The Board's determination as to the effect of the Union's discipline upon these supervisory and executive members, based as it is upon the Board's specialized expertise, is not "to be disturbed by a reviewing court merely because in its own opinion it disagrees with the rightness of the Board's judgment". *Radio Officers*

Union v. National Labor Relations Board, 347 U.S. 17, 48-49, 51. This is true *a fortiori* in the instant case, where any conclusion contrary to the Board's, as to future effect, would be manifestly unreasonable.

B. THE FACTUAL ISSUES RAISED BY THE UNION IN ITS OPPOSITION TO THE PETITIONS FOR CERTIORARI AND IN THE COURT BELOW WERE CORRECTLY DECIDED BY THE BOARD.

The Union urged this Court to deny certiorari, *inter alia*, on the basis that:

> ". . . there will be difficulty in this case in getting to those legal issues the petitioners contend need to be resolved, since there is a dispute *first*, over *whether the hyphenates are §8(b)(1)(B)-type supervisors*, and *second*, as to *whether they performed rank-and-file work during the strike* and thus were clearly subject to discipline under the rule of *Florida Power* . . .". (Emphasis added). (Brief In Opposition To Petitions For Certiorari at p. 3).

While the Union also raised these issues in the Court of Appeals for the Second Circuit, that Court did not reach them because it decided the case "as a matter of law". (Association Pet. App. A, p. 3).

Both issues were fully considered by the Administrative Law Judge and the Board and determined adversely to the Union. (Association Pet. App. A, pp. 7-8; 22-32). The Board's findings and conclusions as to these issues are fully supported by substantial evidence on the record considered as a whole and are therefore conclusive. 29 USC Section 160(e); *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474 (1951).

1. The Board Correctly Found that the Supervisory and Executive Members of the Union Employed by the Employer Members of the Association Are Management Representatives within the Meaning of Section 8(b)(1)(B) of the Act.

There is overwhelming record evidence that all of the executives, executive producers, producers, associate producers, directors, research directors and story editors who were subject to the Union's threats of discipline and discipline are supervisors and adjust the grievances of employees or have the authority to do so,[18] and that a number of the affected executives and producers even negotiate collective bargaining agreements on behalf of their employers. See Section V (A), above. Therefore the Board's finding that the supervisory and executive members of the Union are Section 8(b)(1)(B) management representatives was not subject to being disturbed on review by the court below.

In fact, the Union conceded below that persons in the categories of executive, executive producer, producer, associate producer, director and research director do adjust, or have the authority to adjust, grievances of employees other than writers. (Union Brief In Support Of Exceptions To The Decision Of The Administrative Law Judge, p. 3).

[18]The Union contended below that such grievances as are adjusted by story editors are subject to appeal to higher level management or to the Union and are thus insufficient to constitute story editors Section 8(b)(1)(B) management representatives. A similar contention was considered and rejected by the Board in *Oakland Mailers', supra:*

> ". . . the fact is that the Charging Party has designated the foreman and, in his absence, the assistant foreman, as its *representative to make initial decisions in the adjustment of grievances* or the settlement of disputes arising under the contract, and, I find therefore, that Cox, Thompson, Fraser and Bowlin are *representatives of the Charging Party within the meaning of Section 8(b)(1)(B) of the Act*". (Emphasis added). 172 NLRB at p. 2176.

Moreover, the Union's contention is also inconsistent with its concession, *infra,* that supervisory members, other than story editors, adjust employee grievances, although such adjustment is also subject to appeal to higher level management, i.e. studio executives, or even to a neutral arbitrator.

Nevertheless, the Union contends that these supervisors and executives are not Section 8(b)(1)(B) management representatives because:

> ". . . there was no evidence that any disciplined hyphenate—either before, during or after the strike —performed collective bargaining functions vis-a-vis the disciplining union or its members". *Id.* at p. 2.

This contention is contrary to the plain language of Section 8(b)(1)(B) and has been repeatedly rejected by the courts and by the Board. *International Organization Of Masters, Mates And Pilots v. National Labor Relations Board,* 486 F.2d 1271, 1274 (CADC, 1973); *Wisconsin River Valley Council of the United Brotherhood of Carpenters, supra* at p. 1064; *Triangle Publications, supra* at p. 896 n. 3.

2. The Board Correctly Found that the Supervisory and Executive Members of the Union Employed by the Employer Members of the Association Performed No Rank and File Struck Work.

There is no evidence whatsoever in the record that the Union's supervisory and executive members performed any rank and file struck work during the course of the strike. Rather all of the record evidence is to the effect that these supervisory and executive members were neither asked to write, nor in fact performed any rank and file struck work. See Section V (A), above.

While some of the supervisors and management representatives may have performed certain of the so-called "(a) through (h)" functions[17] during the strike, the plain language of the Agreement makes clear that such work was not reserved to bargaining unit employees and was therefore not rank and file work. It most assuredly was not struck work.

The Agreement carefully delineates those particular writing functions which the parties did intend to reserve to bargaining unit employees: writing or preparing literary material or making revisions, modifications, or changes in literary material. (App. pp. 236-239; General Counsel's Exhibit 2, Art. 1.C.1.a.(1), (2) and (3)). The Agreement, with equal care, delineates those *writing functions which are not so reserved, specifically including among others the "(a) through (h)" functions.*

Moreover, Article 14 A of the Agreement specifically provides that the services of an individual "other than

---

[17]The 1970 Theatrical and Television Film Basic Agreement between the parties excluded from its coverage the following writing services when performed by a producer, director, story editor or any other non-bargaining unit employee:

"(a) Cutting for time
(b) Bridging material necessitated by cutting for time
(c) Changes in technical or stage directions
(d) Assignment of lines to other existing characters occasioned by cast changes
(e) Changes necessary to obtain continuity or legal clearance
(f) Casual minor adjustments in dialogue or variation made prior to or during the period of principal photography
(g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.)
(h) Instructions, directions, or suggestions, whether oral or written made to writer regarding story or teleplay" (App. pp. 236-237; General Counsel's Exhibit 2, Art. 1.C.1.a.(3)(a) through (h)).

as a writer . . . shall not be subject to this Basic Agreement". (App. pp. 250-251). And Articles 1.B.1.a.(2) and 1.C.1.a.(3) provide that the performance of the "(a) through (h)" functions by a producer, director, story editor or any other non-bargaining unit employee "shall not be subject to this Basic Agreement and such services shall not constitute such person a writer hereunder . . .".

The Union's factually unfounded contention that the "(a) through (h)" functions constitute rank and file work is nothing more than a belated effort to bring this case within the Court's holding in *Florida Power*. For, while a number of the Union's strike rules specifically forbade writing for struck employers, none of the supervisory or executive members were charged with having violated such rules. The Union did not try to elicit testimony during the disciplinary hearings held for the purpose of trying "offending" members that such members in fact performed any rank and file struck work. Indeed, by its own admission, the Union was unconcerned with the nature of the services performed by the supervisory and executive members during the strike, but regarded the crossing of the picket line for *any* purpose as grounds for the imposition of discipline. (App. pp. 160-161).

VIII.
CONCLUSION.

The Board's findings and conclusions are based upon the facts found in the record, taken as a whole; properly apply relevant Board and judicial precedent; and have "a reasonable basis in the law". Therefore, the Board's Order is entitled to enforcement by the Second Circuit.

National Labor Relations Board v. Hearst Publications, Inc., 322 U.S. 111, 131 (1944). Accordingly, the judgment of the Court of Appeals for the Second Circuit should be reversed and this case should be remanded to that Court with directions to enforce the Order of the National Labor Relations Board.

Respectfully submitted,

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976
Nos. 76-1121, 76-1153 and 76-1162

No. 76-1121

AMERICAN BROADCASTING COMPANIES, INC., CBS INC. and NATIONAL BROADCASTING COMPANY, INC.,
Petitioners,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

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No. 76-1162

NATIONAL LABOR RELATIONS BOARD,
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WRITERS GUILD OF AMERICA, WEST, INC.,
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On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

Brief for American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc.

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SUBJECT INDEX

Page

Opinions Below 2

Jurisdiction 2

Question Presented 2

Statutes Involved 3

Statement 4

Statement of Facts 4

The Networks' Management and Supervisory Personnel 4

The Guild's Strike Rules and Policies 8

The Strike and Related Threats and Disciplinary Proceedings 10

The Decision of the Board 16

The Decision of the Court of Appeals 17

Summary of Argument 18

Argument 22

I.

The Guild's Blacklisting Threats and Discipline of the Networks' Supervisor-Members Violated Section 8(b)(1)(B) of the Act by Restraining and Coercing the Networks in the Selection of Their Representatives for the Purposes of Collective Bargaining and the Adjustment of Grievances 22

Page

A. The Networks Were Restrained and Coerced in the Selection of Their Supervisor-Members 22

B. The Supervisor-Members Herein Are Employer Representatives Vested With Grievance Adjusting or Collective Bargaining Authority Who Did Not Perform Rank-and-File Struck Work During the Guild's Strike 31

II

The Guild's Contention, Accepted by the Court Below, That Florida Power Should Be Expanded to Permit Union Discipline of Supervisor-Members for Performing Solely Their Supervisory Duties Because There Is No Real Distinction Between the Performance of Normal Supervisory Duties and the Performance of Rank-and-File Struck Work Is Without Merit and Would Require This Court to Reconsider Such Distinction. If the Court Reconsiders Such Distinction, Florida Power Should Not Be Expanded but Should Be Overruled 37

Conclusion 47

TABLE OF AUTHORITIES CITED

Cases Page

American Shipbuilding Co. v. NLRB, 380 U.S. 300 (1965) 32

Bakery and Confectionery Workers Locals 24 & 119 (Food Employers Council, Inc.), 216 N.L.R.B. 917 (1975) 45

Beasley v. Food Fair of North Carolina, Inc., 416 U.S. 653 (1974) 38

Chicago Typographical Union No. 16 (Hammond Publishers, Inc.), 216 N.L.R.B. 903 (1975), enforced, Chicago Typographical Union No. 16 v. NLRB, No. 75-1320 (C.A.D.C. June 21, 1976), petition for cert. filed, 45 U.S.L.W. 3385 (Nov. 16, 1976) 16, 19, 26, 27, 28, 30, 45

Dallas Mailers Union Local 143 (Dow Jones Co. Inc.), 181 N.L.R.B. 286 (1970), enforced, 445 F.2d 730 (C.A.D.C. 1971) 23

Detroit Newspaper Printing Pressmen's Union, Local Union No. 13 (Observer Newspapers, Inc.), 217 N.L.R.B. 576 (1975) 45

Florida Power & Light Co. v. I.B.E.W. Local 641, 417 U.S. 790 (1974) .....
.....5, 16, 17, 18, 20, 21, 23, 25, 26, 27, 29
.....30, 31, 35, 37, 38, 41, 42, 43, 44, 45, 46, 47

Glaziers and Glassworkers Local No. 1621 (Glass Management Assn.), 221 N.L.R.B. 509 (1975) 45

I.B.E.W., Local 641 v. NLRB, 487 F.2d 1143 C.A.D.C. 1973) 24, 31, 46

Page

I.B.E.W. v. N.L.R.B. (Illinois Bell), 487 F.2d 1113 (C.A.D.C. 1972) 23

International Organization of Masters, Mates and Pilots v. NLRB, 539 F.2d 554 (C.A.5 1976) 33

Local Union No. 1959, United Brotherhood of Carpenters, (Aurora Modular Industries), 217 N.L.R.B. 508 (1975) 45

Los Angeles Cloak Joint Board, ILGWU (Helen Rose Co.), 127 N.L.R.B. 1543 (1960) 22

Masters, Mates and Pilots, 197 N.L.R.B. 400 (1972), enforced, 486 F.2d 1271 (C.A.D.C. 1973) 33

Meat Cutters Union Local 81 (Safeway Stores), 185 N.L.R.B. 884 (1970), enforced, 458 F.2d 794 (C.A.D.C. 1972) 23, 24, 33, 34

Meat and Provision Drivers Union Local 626, I.B.T. (Food Employers Council), 224 N.L.R.B. No. 40, 92 L.R.R.M. 1295 (1976) 34, 45

New Mexico District Council of Carpenters & Joiners of America (A.S. Horner, Inc.), 176 N.L.R.B. 797 and 177 N.L.R.B. 500 (1969), both enforced, 454 F.2d 1116 (C.A.10 1972) .. 23

Newspaper Guild, Local 187 (Times Publishing), 222 N.L.R.B. 760 (1976) 45

New York Typographical Union No. 6 (Triangle Publications, Inc.), 216 N.L.R.B. 896 (1975) 16, 26, 27, 44

NLRB v. Bell Aerospace Co., 416 U.S. 267 (1974) 38

Page

NLRB v. Drivers, Chauffeurs, Helpers Local Union No. 639, 362 U.S. 274 (1960) 47

NLRB v. Hearst Publications, Inc., 322 U.S. 111 (1944) 26

NLRB v. Insurance Agents' International Union, 361 U.S. 477 (1960) 21, 43

NLRB v. Metropolitan Life Insurance Co., 380 U.S. 438 (1965) 27

NLRB v. Rochester Musicians Association Local 66, 514 F.2d 988 (C.A.2 1975) 34

Orange Belt District Council of Painters No. 48, 152 N.L.R.B. 1136 (1965) 22

San Francisco-Oakland Mailers Union No. 18 (Northwest Publications, Inc.), 172 N.L.R.B. 2173 (1968) 22

Sheet Metal Workers' International Association, Local Union 49 (General Metal Products Inc.), 178 N.L.R.B. 139 (1969), enforced, 430 F.2d 1348 (C.A.10 1970) 23, 33

Toledo Locals Nos. 15-P & 272, Lithographers & Photoengravers International (Toledo Blade Co., Inc.), 175 N.L.R.B. 1072 (1969), enforced, 437 F.2d 55 (C.A.6 1971) 23

United Brotherhood of Carpenters, Local Union No. 14 (Kaplan Properties), 217 NLRB 202 (1975) 45

Universal Camera Corp. v. N.L.R.B, 340 U.S. 474 (1951) 26, 32

Warehousemen, Drivers and Helpers Local 986, 145 N.L.R.B. 1511 (1964) 22

Page

Warehouse Union Local 6 (Associated Food Stores, Inc.), 220 N.L.R.B. 809 (1975) 45

Wisconsin River Valley District Council (Skippy Enterprises, Inc.), 218 N.L.R.B. 1063 (1975), enforced, 532 F.2d 47 (C.A.7, 1976) 19, 30, 45

Statutes

National Labor Relations Act, Sec. 1 41

National Labor Relations Act, Sec. 2(3) 3, 38, 39, 41

National Labor Relations Act, Sec. 2(11) 3, 5, 32, 41

National Labor Relations Act, Sec. 8(b)(1)(B) ....2, 3, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27 ..29, 30, 31, 32, 33, 34, 38, 41, 42, 43, 44, 47

National Labor Relations Act, Sec. 14(a) 3, 38, 39, 40, 41

61 Statutes at Large, p. 136 3

61 Statutes at Large, p. 137 39

61 Statutes at Large, p. 140 39

61 Statutes at Large, p. 151 39

73 Statutes at Large, p. 519 3

United States Code, Title 28, Sec. 1254(1) 2

United States Code, Title 29, Sec. 151 .....3, 41

United States Code, Title 29, Sec. 152(3) 38

United States Code, Title 29, Sec. 158(B)(1)(b) .. 43

United States Code, Title 29, Sec. 160(e) 32

United States Code, Title 29, Sec. 164(a) 38

Law Review Articles

Page

Wellington, Union Fines and Workers' Rights, 85 Yale Law Journal (1976), p. 1022 46

Miscellaneous

93 Cong. Rec. A 1910, I Leg. Hist. 868-69 40

93 Cong. Rec. 3443 (1947), I Leg. Hist. 647 40

93 Cong. Rec. 3836 (1947), II Leg. Hist. 1009 40

93 Cong. Rec. 4136 (1947), II Leg. Hist. 1064 39

93 Cong. Rec. 4899, 4903-04 (1947) II Leg. Hist. 1443, 1452 40

93 Cong. Rec. 5014 (1947), II Legislative History of the Labor-Management Relations Act (GPO, 1948) 1496 39

Daily Variety 12, 14

Hollywood Reporter 12, 13, 14

Los Angeles Times, June 27, 1973 .....12, 14

Senate Report No. 105, 80th Cong., 1st Sess. 4 (1947), I Leg. Hist. 410 40

Senate Report No. 105, 85th Congress, 1st Sess. 5 (1947), I Leg. Hist., p. 411 .....40, 41

Senate Report No. 105, 80th Cong., 1st Sess. 12-17 (1947), I Leg. Hist. 303-08 39

Rules and Policies

Guild's Strike Rules and Policies, Rule 1 .....9, 11

Guild's Strike Rules and Policies, Rule 2-7 36

Guild's Strike Rules and Policies, Rule 11 8

Guild's Strike Rules and Policies, Rule 12 .....8, 11

	Page
Guild's Strike Rules and Policies, Rule 13	8, 11
Guild's Strike Rules and Policies, Rule 14	8
Guild's Strike Rules and Policies, Rule 19	8
Guild's Strike Rules and Policies, Rule 22	12
Guild's Strike Rules and Policies, Rule 25	8
Guild's Strike Rules and Policies, Rule 26	8
Guild's Strike Rules and Policies, Rule 29	9
Guild's Strike Rules and Policies, Rule 30	12, 13

IN THE

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No. 76-1121

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On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

Brief for American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc.

OPINIONS BELOW

The decision and recommended order of the Administrative Law Judge and the decision of the National Labor Relations Board (hereafter "Board") are reported at 217 N.L.R.B. 957. The decision of a divided panel of the court of appeals, which denied enforcement to the Board's order, is not yet officially reported but is unofficially reported at 93 L.R.R.M. 2958.*

JURISDICTION

The judgment of the court of appeals was entered on November 22, 1976. The petition for a writ of certiorari in No. 76-1121 was filed on February 11, 1977, and the petitions for writs of certiorari in Nos. 76-1153 and 76-1162 were filed on February 22, 1977. These petitions were granted on April 25, 1977, and the cases were consolidated. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Does a labor union violate Section 8(b)(1)(B) of the National Labor Relations Act (hereafter "Act") by disciplining, through substantial fines and blacklisting, those supervisor members and managerial members vested with grievance adjustment or collective bargaining authority who perform solely their normal supervisory and managerial duties during a strike by said union against their employer?

---

*Each of the opinions below is also set forth in Appendices A, B and C, respectively, to the petition for a writ of certiorari filed by petitioners American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc. (hereafter collectively referred to as the "Networks") in No. 76-1121.

STATUTES INVOLVED

The relevant provisions of the Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151, *et seq.*), are as follows:

Section 2. When used in this Act—

* * *

(3) The term "employee" shall include any employee, * * * but shall not include * * * any individual employed as a supervisor * * *.

* * *

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * *

Section 8 * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce * * * (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

* * *

Section 14.

(a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

STATEMENT

Statement of Facts

The Networks' Management and Supervisory Personnel

The Networks comprise a multi-employer unit for the purpose of collective bargaining with the Respondent, Writers Guild of America, West, Inc. (hereafter "Guild"). Until March 4, 1973 the Networks and the Guild were parties to a collective bargaining agreement entitled "Writers Guild of America Theatrical and Television Film Basic Agreement of 1970-Networks" (hereafter "WGA-Network Film Agreement"). (A. pp. 314-80.)* This agreement covered employees who rendered writing services in the preparation of materials for tape and motion picture film programs broadcast by the Networks.**

At all times relevant hereto, the Networks employed as supervisory and management personnel, executive producers, associate producers, producers, directors and executive story consultants (also known as story editors or executive story editors). Some of the persons so employed by the Networks were also Guild members (A. pp. 9-10, 21-22), having voluntarily retained their membership while performing management services since individuals in the entertainment industry frequently interchange between writer and managerial posi-

*The designation "A. pp. 314-80" refers to pages 314-380 in the two volume appendix filed with petitioners' briefs. Similar designations will be used throughout this brief.

**Freelance writers who wrote material for live television programs were covered by an essentially identical separate agreement between the Networks and the Guild which expired February 13, 1973. (G.C. Ex. 10.) "G.C. Ex. 10" refers to Exhibit 10 introduced into evidence by the General Counsel. Similar designations will be used throughout this brief. This exhibit was part of the record before the court below but was not printed in the appendix before this Court.

tions.* The WGA-Network Film Agreement expressly excludes these supervisory classifications from the bargaining unit and the union security clause. (A. p. 317.)**

Executive producers, producers, directors and executive story consultants together constitute the primary management group of any television or motion picture production unit. Their services are expressly excluded from the coverage of the WGA-Network Film Agreement, even if they perform incidental writing services such as cutting script material to keep a program within its prescribed time limits and the writing of "bridging" material necessitated by said cuts, changes in technical or stage directions, script revisions necessary for legal clearance and series continuity acceptance, minor changes in dialogue, script changes necessitated

*Persons who are employed in these management and supervisory positions and who have retained their Guild membership are frequently referred to within the entertainment industry as "hyphenates." This term reflects their dual capabilities and past services (*e.g.*, writer-producer, writer-director, writer-executive), or in some cases their dual or multiple guild memberships, but does not denote their actual capacities or duties. (Tr. 383-84, 584-85, 642, 670-72, 752.) "Tr." refers to the pages of the Transcript of Hearing before the Administrative Law Judge which were part of the record before the court below but which were not printed in the appendix before this Court. The term "supervisor-member," which is used in this brief to conform with the Court's teminology in *Florida Power & Light Co. v. I.B.E.W. Local 641*, 417 U.S. 790 (1974) is synonymous with "hyphenates" for purposes of this discussion.

**Other supervisory and management personnel of the Networks who may retain Guild membership include producer-directors, research directors, executive assistants to the vice-president, vice-presidents for program production, vice-presidents for production, vice-presidents for program development, general programming executives and managers of film programs. (A. pp. 9-10, 21.) However, all of the supervisor-members against whom the Guild assessed penalties held one of the job titles set forth in the text. The Guild expressly conceded that hyphenates other than story editors are supervisors within the meaning of §2(11) of the Act and adjust grievances other than those of writers. (A. p. 590.)

by unforeseen contingencies, and, in certain circumstances, any changes in dialogue, narration or action so long as such changes are not "significant" revisions in plot, story line or interrelationship of characters. Such incidental writing services are known in the industry as the "(a) through (h)" services. (A. pp. 317-18, 322-23.)

The executive producer and producer have complete budgetary and creative authority, responsibility and control over the entire production process and all production personnel from idea inception through final post-production and marketing. (Tr. pp. 547-48, 838-40.)

The executive story consultant works with the executive producer and the producer in selecting writers and in evaluating and revising screenplays. The executive story consultant has the authority effectively to recommend both the hiring and discharge of writers. (A. pp. 132-33.) The executive story consultant also has broad authority in resolving grievances of writers who are working under his direction (A. pp. 121-22, 132-33), including disputes as to the necessity for, and creative approach to, a rewrite (A. pp. 34-35), and the assignment of credits. (A. p. 109.) If a writer is not satisfied with the executive story consultant's disposition of a grievance, the producer will be called upon to adjust the matter. (A. pp. 40-41.)

The ability of executive producers, producers, and executive story consultants to attract, work harmoniously with, and retain skilled writers is essential to the performance of their own duties, and determines in large part their own employment value to present and future employers. (A. pp. 50-51; Tr. pp. 690-92, 844-47.)

Once the script has been finalized, the executive producer and producer determine the location where each segment is to be filmed, select the director for each program segment, and, in consultation with the

director, determine which actors and other personnel to hire. (A. pp. 123-24.)

When an episode is to be shot on location outside of the Southern California area, the producer is responsible for making the local labor arrangements, including the negotiation of collective bargaining contracts and personal service contracts. (A. p. 127.) He is also responsible for overseeing and determining the budget for such matters as transportation, accommodations, wardrobe, and makeup. (Tr. p. 558.)

During the period when a program is being filmed, the director is in immediate charge of all employees on the set, while the producer or executive producer generally supervises the direction, frequently meeting with the director to view the "dailies" (freshly developed film footage) and to discuss the film's progress. (A. p. 124.) The executive producer and producer have final authority as to the content of the final print. (A. p. 124.)

The producer and executive producer have extensive responsibility and authority in resolving grievances on a daily basis (A. pp. 31-32, 45-46, 62-63, 73-74, 124-26, 153-54), including claims by extras for additional pay (A. p. 93), grievances concerning the adequacy of dressing room facilities, wardrobe, and transportation (A. p. 94, 156), jurisdictional disputes (A. p. 32), creative differences between editors and writers (A. p. 73) and other grievances involving writers. (A. pp. 40-41.)

Associate producers employed by the Networks have primary responsibility for supervising the post-production process, including the printing and editing of all film footage. (A. pp. 128-29.) The associate producer thus represents the employer in resolving employee grievances and dealing with the daily problems raised

by the unions representing the employees under his supervision. (A. pp. 129-30.)

The Guild's Strike Rules and Policies

In late February of 1973, the Guild prepared, published and distributed to all members, including the Networks' supervisor-members discussed hereinabove, its "Rules for the Conduct of Members During a Strike." (A. pp. 11, 15-20, 21.) The Rules were expressly made applicable to the supervisor-members:

> "24. All members, regardless of the capacity in which they are working, are bound by all strike rules and regulations in the same manner and to the same extent as members who confine their efforts solely to writing." (A. p. 19.)

Other rules reinforced this principle. For example, Rule 14 provides that during a strike members may not read or study any script or literary material "which might have any actual or potential connection with future employment of said members *as writers or otherwise* . . ." and Rule 19 provides that a member may not conduct negotiations with a struck production company for financing a production "or for his participation in such production *in any capacity*." (A. pp. 17-18; emphasis supplied.) Rule 26 provides that the term "member" as used throughout the rules encompasses anyone admitted to the Guild membership, even if on inactive or withdrawn status. (A. p. 19.)

The Rules prohibit not only the performance of writing services, but also the crossing of a picket line for any purpose (Rule 12; A. p. 17), the purchase of literary material (Rule 11; A. p. 17), the hiring of any writers on behalf of a struck employer (Rule 25; A. p. 19), entering the premises of a struck employer to view any film in production (Rule 13; A. p. 17), and any "conduct tending to defeat a strike or in any way weaken its effectiveness." (Rule 1; A. p. 15.)

As punishment for the offenses just described, the Rules provide for suspension or expulsion from Guild membership, censure, and fines (Rule 29; A. p. 20), and also for blacklisting:

> "30. No member shall work with any individual, including a writer-executive who has been suspended from Guild membership by reason of his violation of strike rules, or who has been found by the Council to have violated strike rules, in the event no disciplinary action was instituted against such person." (A. p. 20.)

By letter dated February 9, 1973, the Guild's Executive Director Michael H. Franklin scheduled a "special meeting of Hyphenate members" of the Guild for February 15, 1973, in order to discuss "those matters which Hyphenate members consider pertinent" with respect to the negotiations and possible strike action. (Assoc. Ex. 1.)* On February 15, 1973, between 100 and 140 supervisor-members assembled in response to this notice (A. p. 87), and were told by Franklin that the Guild's Strike Rules applied to them as members irrespective of their actual capacities, and that they were forbidden to perform services of any kind during a strike. (A. pp. 11, 88.)

The Guild's Constitution and By-Laws provide that no resignation of membership is effective until accepted by the governing Council of the Guild, and that the

*"Assoc. Ex. 1" refers to Exhibit 1 introduced into evidence by petitioner Association of Motion Picture and Television Producers, Inc. (hereafter "Association"). Similar designations will be used throughout this brief. The exhibit was part of the record before the court below but was not printed in the appendix before this Court.

Council may refuse to accept a tender of resignation and may instead "require the member either to continue his membership for a designated period not to exceed two years or to be expelled in bad standing." (Art. IV, Sec. 7; A. p. 397.) At all times relevant hereto, the Guild had a policy of not permitting any member to resign from its membership during the pendency of collective bargaining negotiations with the Networks and for at least six months after the conclusion of such negotiations. (A. p. 579.) This policy was implemented in these cases when the Guild refused to accept the resignation of a supervisor-member who attempted to resign shortly before the strike. (A. pp. 559-60.)

The Strike and Related Threats and Disciplinary Proceedings

In late February of 1973, representatives of the three Networks met and determined that during the anticipated Guild strike the Networks would not require any of their supervisory personnel to perform writing services, and so advised their personnel. (A. pp. 177-78.) For example, on March 28, 1973, the President of CBS Television Network sent a memorandum entitled "Writers Guild Negotiations" to all supervisory personnel in which he reviewed the progress of negotiations and the threats by the Guild, and concluded as follows:

> "In the event of a strike and/or the establishment of any picket line, we will expect you to continue to perform as a member of our management team and continue to report for work. If you are a member of the Writers Guild, such membership will not relieve you of your supervisory obligations to us but should the Guild attempt to fine you for performing your supervisory obligations to us and institute proceedings to impose such fines, CBS will provide you with a defense to any such proceedings at our cost and will indemnify you against any such fines imposed in such proceedings.
>
> "You realize that CBS must and will preserve all of its legal rights and remedies if you are in breach of contract or otherwise fail to render your services as a supervisor.
>
> "We undertake this course of action with regret, but we simply must fulfill our contractual and moral obligations." (A. pp. 531-32.)

On March 29, 1973, the Guild called an economic strike against the Networks, which was to last almost four months, and established picket lines at the premises of each employer. (A. pp. 11, 22.)

On April 9, 1973, the Guild mailed to each of its members a bulletin entitled "Strike and Discipline" (Assoc. Ex. 6), in which the Guild reported that it planned to institute disciplinary proceedings against certain unnamed supervisor-members who were suspected of violating strike rules.

Commencing in late February 1973, various officers and agents of the Guild telephoned numerous supervisor-members and threatened that if they failed to support the strike no Guild member would work with them or perform services for them at any time in the future. (A. pp. 122-23, 147, 157-58.)

On April 14, 1973, the Guild formally charged John Mantley, Executive Producer for CBS, with violations of Guild Strike Rules 1, 12 and 13, for having

crossed a Guild picket line during the strike. (A. pp. 308-10.) The Guild concurrently charged seven other supervisor-members employed by Association member-companies and by an independent production company with similar offenses. None was charged with violating any of the many Rules which relate to the performance of bargaining unit work.

Also on April 14, 1973, the Guild issued a press release in which it announced the aforementioned charges, and added the following statement:

> "Those convicted will appear on a 'Roll of Dishonor'—according to Guild officials, and be listed in Guild publications 'in perpetuity so that Guild members for years to come will never forget.' A Guild spokesman characterized those members guilty of scabbing as 'pariahs who have betrayed their colleagues.'" (A. p. 561.)

This statement was immediately quoted in news articles appearing in the *Los Angeles Times* (A. p. 564) and in the two motion picture-television daily trade newspapers, *Daily Variety* (Assoc. Ex. 4(c)) and the *Hollywood Reporter*. (A. p. 562.)*

By letter dated May 7, 1973, the Guild advised each of its members that its Board of Directors had on April 30, 1973, "rescinded" Strike Rule 30 which had provided for blacklisting of members who violated any Strike Rule. (A. pp. 568-69.) The May 7 letter admitted that Rule 30 "carries the odious implications

*The Guild's Strike Rule 22 provided in relevant part that "A member is chargeable with knowledge of . . . any strike information made known to the entertainment industry through any recognized means of communication such as trade papers, newspapers. . . ." (A. pp. 18-19.)

of a 'black list.'" On May 10, 1973, the Guild caused a news article to be published in the *Hollywood Reporter*, which added the following qualifications to the purported rescission:

> "A guild official who participated in the board revocation of rule 30 said yesterday he was not certain whether plans for the roll of dishonor would be abandoned in view of the action to avoid the appearance of blacklisting.
>
> "'What it does affect,' he noted, 'is the rule itself which would make it mandatory, and that, of course, was what the letter [rescinding Rule 30] was all about.'" (A. p. 537.)

On June 11, 1973, the Guild conducted an intra-union disciplinary hearing on the charges against John Mantley described hereinabove. The only evidence presented at the hearing with respect to the nature of the services performed by Mantley during the strike was Mantley's uncontradicted declaration that "neither I nor any of my production office staff have performed any writing functions whatosever," and a declaration to the same effect by the director of the same show. (G.C. Ex. 16N; Resp. Ex. 1 attached thereto.)* The Guild stipulated at the hearing in the instant cases that it prosecuted the disciplinary cases against the supervisor-members without regard to the nature of the services performed by them behind the picket lines. (A. pp. 160-61.)

*"Resp. Ex. 1" refers to Exhibit 1 introduced into evidence by the respondent Guild. Similar designations will be used throughout this brief. This exhibit was part of the record before the court below but was not printed in the appendix before this Court.

On June 25, 1973, the Board of Directors issued its Decision and Order in the Mantley matter. It found that Mr. Mantley had been given full and timely notice of the Guild's Strike Rules and of the fact that his employer was being struck, and that he "nevertheless crossed a Guild picket line and entered the struck premises of CBS Studio Center to perform services, in violation of the Rules. . . ." It then ordered that he be expelled from Guild membership effective immediately, and that he be fined $50,000 plus the costs of the hearing. (G.C. Ex. 17f.)

Immediately thereafter, the Guild issued a press release concerning its discipline against Mantley and four other hyphenates which resulted in articles appearing on June 27, 1973, in the *Los Angeles Times* (headlined "WRITERS GUILD FINES, EXPELS 5 WHO CROSSED PICKET LINES") (A. p. 533); the *Hollywood Reporter* (headlined "WGA OUSTS FIVE; FINES MOUNT UP TO $127,000") (A. p. 536); and *Daily Variety* (headlined "WGA FINES, OUSTS 5 HYPHENATES—50G Slapped on Mantley, Victor; 25G for Blees; Some Say They Won't Pay"). (A. pp. 534-35.)

Subsequently the Guild filed notices of disciplinary hearings and charges against numerous other supervisor-members employed by the Networks charging each with having crossed the Guild's picket line during the strike. (G.C. Ex. 15e, 15f, 21, 22.)

Pursuant to the internal rules of the Guild, John Mantley had, on July 20, 1973, filed a notice of

appeal to the full Guild membership of the decision of the Guild's Board of Directors. (G.C. Ex. 23c.) The Guild scheduled a general membership meeting for November 12, 1973, in order to hear the appeal of Mantley and eight other supervisor-members. (A. p. 582.)

On or about October 26, 1973, the Guild mailed to each of its members a bulletin which detailed the discipline which the Guild's Board of Directors had imposed against Mantley and others, notified the membership concerning the scheduled November 12, 1973 meeting, and explained the effects of expulsion from the Guild. (A. p. 582.) That bulletin included the following statement:

> "There is obviously a stigma attached to expulsion which might cause individual members of the Guild to refrain from working with such a person." (A. p. 540.)

This statement was repeated by the Guild in a bulletin dated November 12, 1973, and distributed to all members who attended the membership meeting of that same date. (G.C. Ex. 24.)

At the November 12, 1973 general meeting, the Guild membership voted to reduce the fine against Mantley from $50,000 to $3,883.48 and to set aside his expulsion from membership. The penalties of the other appealing hyphenates were similarly reduced. Charges against several of the remaining accused supervisor-members employed by the Networks were held in abeyance pending the outcome of the instant litigation. (A. pp. 583-84.)

The Decision of the Board

Based on the foregoing facts, the Board determined that the Guild's conduct violated § 8(b)(1)(B). Shortly before the instant case came before the Board, the Court held in *Florida Power & Light Co. v. I.B.E.W., Local 641*, 417 U.S. 477 (1974) that union discipline of supervisor members who perform solely rank-and-file struck work during a strike does not violate § 8(b)(1)(B) because such discipline does not "adversely affect" the supervisor-members' future performance of grievance adjusting or collective bargaining. In the instant cases, however, the Board found that the supervisor-members performed solely supervisory work during the Guild's strike. Applying *Florida Power*'s test, the Board concluded that the Guild's discipline would have the likely and probable effect of adversely affecting the supervisor-members' future performance of grievance adjusting or collective bargaining on behalf of their employer.*

Member Fanning dissented from the Board's decision for the same reasons set forth in his dissenting opinion in *New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 216 N.L.R.B. 896, 897 (1975). In Fanning's view, the type of work actually performed by supervisor-members who cross picket lines is irrelevant under the Court's decision in *Florida Power*.

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*The Board referred to the rationales set forth in two of its earlier cases decided after *Florida Power*, *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, 216 N.L.R.B. 903 (1975), *enforced, Chicago Typographical Union No. 16 v. NLRB*, No. 75-1320 (C.A.D.C. June 21, 1976), *petition for cert. filed*, 45 U.S.L.W. 3385 (Nov. 16, 1976) and *New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 216 N.L.R.B. 896 (1975), in reaching this conclusion.

The Decision of the Court of Appeals

On a petition for review filed by the Networks (with the Association intervening) and an application for enforcement filed by the Board (with the Networks intervening), a divided panel of the Court of Appeals for the Second Circuit denied enforcement of the Board's order. In a brief *per curiam* opinion, the majority of the panel held that "[f]or substantially the reasons set forth in the dissenting opinion of Board Member John H. Fanning . . . the Board as a matter of law incorrectly applied Section 8(b)(1)(B) to the instant case," citing *Florida Power*. (Networks' Pet. App. C-3.*)

In dissent, Circuit Judge Moore found that the majority's reliance on *Florida Power* was misplaced. According to Judge Moore's analysis, *Florida Power* "made it clear that there is a definite cleavage between supervisory work and 'rank-and-file' work." (Networks' Pet. App. C-5.) Applying *Florida Power*'s "adverse effects" test to the present cases, Moore determined that this test was fully satisfied because the "*in terrorem* action by the Guild would inevitably have an effect of inclining these employees [the supervisor-members] towards their Unions in matters supervisory and managerial when they should have been free of any coercive influences." (*Id.*) Finally, Judge Moore found that the Board's findings were amply supported by the record and that the Board's decision should therefore be enforced because "[t]he Court of Appeals should not usurp the function of the ALJ and Board unless there is a complete absence of evidence to support its findings." (*Id.* at C-6.)

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*"Networks' Pet. App. C-3" refers to page C-3 of appendix C to the Networks' petition for a writ of certiorari in No. 76-1121. Similar designations will be used throughout this brief.

SUMMARY OF ARGUMENT

I.

Section 8(b)(1)(B) of the Act prohibits union restraint or coercion of an employer "in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances." The section has consistently been interpreted by the Board and the courts to prohibit such restraint and coercion whether applied to an employer directly or whether applied indirectly through union discipline of supervisor-members who are vested with grievance adjusting or collective bargaining authority. Thus, the Board has found § 8(b)(1)(B) violations where supervisor-members who are vested with grievance adjusting or collective bargaining authority are disciplined by unions for performing their normal supervisory duties other than grievance adjusting or collective bargaining.

In *Florida Power & Light Co. v. I.B.E.W., Local 641*, 417 U.S. 790 (1974), the Court held that "unions did not violate § 8(b)(1)(B) of the Act when they disciplined their supervisor-members for performing *rank-and-file struck work*." 417 U.S. at 813 (emphasis supplied). In the instant cases, the lower court mistakenly read *Florida Power* as controlling. It is not. The Court in *Florida Power* did not set aside prior Board cases. Rather, the Court recognized that union discipline of supervisor-members which may adversely affect their performance as collective bargainers or grievance adjusters violated § 8(b)(1)(B). The Court determined, however, that union discipline of supervisor-members for performing "rank-and-file struck work" during a lawful economic strike could not "adversely affect" supervisor-members' future performance of their duties as grievance adjusters and collective bargainers. The Court's narrow holding in *Florida Power* left it to the Board in its expertise to determine in future cases

involving different factual circumstances, whether and to what degree union discipline of supervisor-members who do not perform rank-and-file struck work is likely adversely to affect their future performance as grievance adjusters and collective bargainers. See *Wisconsin River Valley District Council of Carpenters v. NLRB*, 532 F.2d 47 (C.A. 7 1976); *Chicago Typographical Union No. 16 v. NLRB*, No. 75-1320 (C.A.D.C. June 21, 1976), *enforcing* 216 N.L.R.B. No. 149 (1975), *petition for cert.* filed 45 U.S.L.W. 3385 (Nov. 16, 1976).

The Board determined in the instant cases that the Guild's well planned and calculated campaign of threats, substantial fines, expulsion and blacklisting of supervisor-members who performed solely their managerial and supervisory duties would be likely adversely to affect their future performance as collective bargainers and grievance adjusters on behalf of their employers. The conclusion that the Guild's *in terrorem* tactics would have the probable effect of precluding the supervisor-members from effectively and responsibly acting on behalf of their employers in their capacities as grievance adjusters and collective bargainers lest they again offend the Guild is correct and unassailable. It is amply supported by the record and under well established principles of judicial review ought not to have been disturbed by the court below.

The Board correctly found that the supervisor-members in these cases are employer representatives vested with the authority to adjust grievances or collectively bargain who performed no rank-and-file struck work during the strike. These findings, which were not disturbed by the court below, are supported by substantial evidence on the record as a whole and therefore are conclusive.

II.

The Court's narrow holding in *Florida Power* was based entirely on the distinction drawn between the performance of normal supervisory duties and the performance of rank-and-file struck work. The Guild contended below that there is no real distinction between normal supervisory duties and the performance of rank-and-file struck work and urged that *Florida Power*'s limited rank-and-file struck work exception to § 8(b)(1)(B) be expanded into a general crossing a picket line exception. A majority of the panel of the court of appeals agreed. *Florida Power* should not, however, be expanded to permit union discipline of supervisor-members who perform solely their normal supervisory duties. Rather, if the Court is to reconsider the distinction between the performance of rank-and-file struck work and the performance of normal supervisory duties, *Florida Power* should be overruled.

Florida Power has blurred the distinction between management and labor which Congress sought to establish, it has proved unwieldy in its application, and it has deprived employers, such as the Networks herein, of their only effective means of assuring supervisory loyalty.

Congress was extremely concerned with insuring that employers would be guaranteed the undivided loyalty of their supervisors when it amended the Act in 1947. The overall legislative history of the 1947 amendments and the language of the Act demonstrate Congress' intent that there be no middle ground between supervisors and employees and that the former be treated solely as a part of management. Even *Florida Power*'s rank-and-file struck work exception to § 8(b)(1)(B) exacerbates the problem by depriving employers of their supervisors' loyalty at the very time when

the need for such loyalty is paramount. Moreover, a supervisor-member performing rank-and-file struck work during a strike to enhance his employees' bargaining position is as much a "part and parcel of the process of collective bargaining," *NLRB v. Insurance Agents International Union*, 361 U.S. 477, 495 (1960), as are the strikers manning picket lines.

Florida Power's focus on the type of work performed by supervisor-members has also proved to be unwieldy and difficult to apply, generating uncertainty as to what duties employers may require their supervisors to perform. Thus, in each case, the Board has had to determine precisely what duties were performed by supervisor-members behind picket lines, whether those duties differed significantly from those performed prior to the strike, and whether they constitute rank-and-file struck work.

Finally, *Florida Power*'s suggestion that employers have the option of securing supervisory loyalty either by requiring supervisors to resign from unions or by not hiring those that are members in the first place has proved to be illusory, as evidenced by the present cases. The Guild refused to accept the supervisor-members' resignations. Moreover, in the entertainment industry there is a long established tradition of creative managers and supervisors retaining some form of membership in many guilds and unions because they may return to performing writing or other creative work at some time in the future; employers are therefore effectively precluded from refusing to select some Guild members as their representatives for adjusting grievances or collective bargaining or there would be very few qualified persons whom they could so select. Accordingly, the only effective protection of the Networks' right to choose whomever they wish as grievance adjusters and collective bargainers is § 8(b)(1)(B).

ARGUMENT.

I.

The Guild's Blacklisting Threats and Discipline of the Networks' Supervisor-Members Violated Section 8(b)(1)(B) of the Act by Restraining and Coercing the Networks in the Selection of Their Representatives for the Purposes of Collective Bargaining and the Adjustment of Grievances.

A. The Networks Were Restrained and Coerced in the Selection of Their Supervisor-Members.

The early § 8(b)(1)(B) cases brought before the Board involved union restraint and coercion applied directly to an employer to pressure it to dismiss labor relations personnel hostile to unions or to appoint personnel favorable to organized labor.* In *San Francisco-Oakland Mailers Union No. 18 (Northwest Publications, Inc.)*, 172 N.L.R.B. 2173 (1968), the Board found that union discipline of three supervisor-members for their interpretation and application of a collective bargaining agreement violated § 8(b)(1)(B) by indirectly restraining and coercing the employer in its choice of its representatives because the employer "would have to replace its foremen or face *de facto* nonrepresentation by them." *Id.* at 2173. The fact that the union chose to exert pressure on the employer by indirect rather than direct means did not lessen the unlawful restraint and coercion.

Subsequent to *Oakland Mailers*, the Board continued to find § 8(b)(1)(B) violations in cases where unions indirectly coerced employers in the selection of

See, e.g., Los Angeles Cloak Joint Board, ILGWU (Helen Rose Co.), 127 N.L.R.B. 1543 (1960); *Orange Belt District Council of Painters No. 48*, 152 N.L.R.B. 1136 (1965); *Warehousemen, Drivers and Helpers Local 986*, 145 N.L.R.B. 1511 (1964).

their grievance adjusters and collective bargainers by disciplining supervisor-members who are vested with grievance adjusting or collective bargaining authority for performing their other supervisory duties. These decisions were uniformly upheld by the various courts of appeals.*

However, in 1973 a bare majority of the Court of Appeals for the District of Columbia, sitting *en banc*, determined on rehearing in the *Florida Power* cases** that the Board had unduly expanded the scope of § 8(b)(1)(B) in holding that union discipline

Meat Cutters Local 81 (Safeway Stores), 185 N.L.R.B. 884 (1970), *enforced*, 458 F.2d 794 (C.A.D.C. 1972) (§ 8(b)(1)(B) violated by discipline imposed on supervisor-member for his implementation of employer's new meat procurement policy); *Dallas Mailers Union Local 143 (Dow Jones Co. Inc.)*, 181 N.L.R.B. 286 (1970), *enforced*, 445 F.2d 730 (C.A.D.C. 1971) (unlawful union discipline when imposed for manner in which supervisor-member directed employee to perform duties); *Sheet Metal Workers' International Association, Local Union 49 (General Metal Products, Inc.)*, 178 N.L.R.B. 139 (1969), *enforced* 430 F.2d 1348 (C.A.10 1970) (supervisor-member unlawfully disciplined for performing work allegedly within union's jurisdiction); *New Mexico District Council of Carpenters & Joiners of America (A.S. Horner, Inc.)*, 176 N.L.R.B. 797 and 177 N.L.R.B. 500 (1969), *both enforced*, 454 F.2d 1116 (C.A.10 1972) (§ 8(b)(1)(B) violation found where union disciplined supervisor-members for working without union work permit and for signing pro-management letter); *Toledo Locals Nos. 15-P & 272, Lithographers & Photoengravers International (Toledo Blade Co., Inc.)*, 175 N.L.R.B. 1072 (1969), *enforced*, 437 F.2d 55 (C.A.6 1971) (§ 8(b)(1)(B) violated by union discipline of supervisor-members for working beyond normal work hours with too small a work crew, allegedly in violation of union work rules).

**The original case before the court of appeals, *I.B.E.W. v. N.L.R.B. (Illinois Bell)*, 487 F.2d 1113 (C.A.D.C. 1972), involved the same issue presented in *Florida Power*. The panel which decided that case, however, held that union discipline of supervisor-members for performing rank and file struck work does violate § 8(b)(1)(B). Subsequently, a petition for rehearing was granted in *Illinois Bell*, 487 F.2d at 1143, the case was consolidated with *Florida Power*, and the court of appeals *en banc* reversed the panel in a 5-4 decision.

of supervisor-members for performing rank-and-file struck work during the course of an economic strike constituted a § 8(b)(1)(B) violation. *I.B.E.W., Local 641 v. NLRB*, 487 F.2d 1143 (C.A.D.C. 1973). The court did not dispute the Board's holdings in prior cases that union discipline of a supervisor-member vested by his employer with grievance adjusting or collective bargaining authority for performing supervisory duties other than grievance adjusting or collective bargaining restrained and coerced his employer in violation of § 8(b)(1)(B). Rather, the court stated:

> "When a supervisor acts as such he is a representative of management, and as such should be immune from union discipline. The unions participating in the present cases conceded as much at oral argument when they agreed that when a supervisor crosses a picket line to perform *supervisory* work he remains immune from discipline. But when a supervisor forsakes his supervisory role to do rank-and-file work ordinarily the domain of nonsupervisory employees, he is no longer acting as a management representative and no longer merits any immunity from discipline."* *Id.* at 1157 (emphasis in original).

The court disagreed, however, with the Board's determination that discipline of supervisor-members vested with grievance adjusting or collective bargaining authority for performing solely rank-and-file struck work would have any coercive effect upon an employer.

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*The court specifically did not overrule its prior decision in *Meat Cutters Union Local 81 v. NLRB*, 458 F.2d 794 (C.A.D.C. 1972), which held that § 8(b)(1)(B) was violated by union discipline of a supervisor-member for performance of supervisory functions which did not involve collective bargaining or the adjustment of grievances. 487 F.2d at 1157-58.

This was the decision facing the Court in *Florida Power*. The Court clearly recognized the specific and narrow issue presented to it* and reached an equally narrow holding:

> "[W]e hold that the respondent unions did not violate § 8(b)(1)(B) of the Act when they disciplined their supervisor-members for *performing rank-and-file struck work*." *Id.* at 813 (emphasis supplied.)

After reviewing the legislative history of § 8(b)(1)(B) and concluding that Congress intended to restrain union conduct which is likely to influence an employer's selection of its representatives vested with the authority to adjust grievances or collectively bargain, the Court formulated the following test:

> "[A] union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." *Id.* at 804-805.

Clearly, the Court in *Florida Power* did not reject the Board's application of § 8(b)(1)(B) to prohibit union discipline of supervisor-members which may adversely affect their future performance as collective bargainers or grievance adjusters on behalf of their employer. Rather, the Court disagreed with the Board's opinion that union discipline of a supervisor-member vested with grievance adjusting and collective

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*"The question to be decided is whether the unions committed unfair labor practices under § 8(b)(1)(B) when they disciplined their supervisor-members for crossing the picket lines and performing rank-and-file struck work during lawful economic strikes against the companies." 417 U.S. at 792.

bargaining authority for performing solely rank-and-file struck work can have such an adverse effect.

Florida Power, therefore, is not controlling where, as in the instant cases, supervisor-members who do not perform rank-and-file struck work are nevertheless subjected to union discipline. The Court has left the determination whether such union discipline restrains and coerces an employer by adversely affecting the supervisor-members' future performance of collective bargaining and grievance adjusting functions to the Board. It thus remains the function of the Board, "as one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge," *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951), to determine based upon the facts and circumstances of each case whether the union discipline imposed on supervisor-members "may adversely affect" their future performance in adjusting grievances or collectively bargaining. As discussed below, the Board's determination of this issue in the instant cases is in accord with Board precedent following *Florida Power*, and because it has " 'warrant in the record' and a reasonable basis in law," *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 131 (1944), it ought not to have been disturbed by the court below. *Universal Camera Corp. v. NLRB, supra.*

In the instant cases, the Board made such determination by relying upon its post-*Florida Power* decisions in support of its finding of a § 8(b)(1)(B) violation. *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, 216 N.L.R.B. 903 (1975)*, *New York Typographical Union No. 6 (Triangle Publications,*

*Enforced, *Chicago Typographical Union, No. 16 v. NLRB* No 75-1320 (C.A.D.C. June 21, 1976), *petition for cert. filed*, 45 U.S.L.W. 3385 (Nov. 16, 1976).

Inc.), 216 N.L.R.B. 896 (1975). These decisions set forth more fully the Board's rationale.* In *Hammond Publishers, Inc., supra*, the Board focused upon the "adverse effect" test of *Florida Power* and concluded:

> "[t]he . . . question of 'when that discipline may adversely affect the supervisor's conduct . . .' clearly depends on an analysis of the activity engaged in by the supervisor during the period for which the discipline is imposed, rather than on any evaluation of the union's motivation." 216 N.L.R.B. at 904.

In the Board's view, union discipline of a supervisor-member for crossing a picket line to perform only supervisory duties violates § 8(b)(1)(B) because "it is reasonably likely that an adverse effect will carry over to the supervisor's performance of his 8(b)(1)(B) duties. . . ."** *Id.*

The Board amplified its view of the scope of § 8(b)(1)(B) in light of *Florida Power* in *Triangle Publications, Inc., supra:*

> "We believe that the adverse future effect which the Supreme Court referred to as violative in *Florida Power* is as likely to occur, regardless of a union's professed reasons or intent, if a

*As this Court noted in *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 443 n.6 (1965), it is perfectly proper for the Board to "articulate the basis of its order by reference to other decisions."

**The Board drew support for this conclusion from the fact that the majority decision in *Florida Power* noted that the supervisors therein who crossed the picket line to perform only their supervisory functions were not disciplined by the union. In addition, the Board noted Mr. Justice White's comment in his dissenting opinion in *Florida Power* that "I do not read the Court to say that § 8(b)(1)(B) would allow a union to discipline supervisor-members for performing supervisory or management functions, as opposed to customary rank-and-file work, during a labor dispute." *Hammond Publishers, Inc.*, 216 N.L.R.B. 903, 904 n.9.

supervisor-member is disciplined after having performed only his normal supervisory duties or if he is disciplined after having engaged in contract interpretation. In the latter case, it is the supervisor's future manner of contract interpretation which is likely to be influenced and in the former case it is the supervisor's actual future performance of supervisory duties, including grievance adjustment or collective bargaining, which is likely to be influenced. In either case, the employer has been restrained in the selection of his 8(b)(1)(B) representative." 216 N.L.R.B. at 897.

The Board's determination in the instant cases that the reasonably foreseeable effect of the Guild's campaign of threats and discipline against the supervisor-members would be to make them reluctant to take a position adverse to the Guild in the future performance of their supervisory duties, including acting in their capacities as collective bargainers and grievance adjusters, is sound.

It is precisely this type of determination that the Board, "informed with experience to deal with a specialized field of knowledge," is vested by the Act with making. The *in terrorem* action employed by the Guild through its sweeping "Rules For Conduct of Members During a Strike" enforced by its threats and actions of fines, expulsion and blacklisting were calculated to make any supervisor-member who wished to continue working in the entertainment industry in a managerial or supervisory capacity very wary of offending the Guild in any way whatsoever. Having once felt the lash of Guild discipline as a result of merely performing his normal supervisory duties during the strike, which conduct the Guild apparently believed was adverse to it, a supervisor-member would tend to tread very cautiously in his future conduct, for

fear that he again invoke the imposition of sanctions which might preclude him from carrying on with his occupation.* After suffering a $50,000 fine and blacklisting in the industry for crossing the Guild's picket line a supervisor-member will, on each future occasion in which he finds himself in a potentially adversary position to the Guild, when adjusting grievances or engaging in collective bargaining, be dissuaded from freely exercising his unfettered discretion on behalf of his employer by the specter of what might occur if he displeases the Guild. The foreseeable result of the Guild's actions is a representative vested with grievance adjusting or collective bargaining authority who has a diminished capacity to function effectively in that role on behalf of his employer. Clearly this deprives the employer of the management representative § 8(b)(1)(B) contemplates.

The panel majority below erroneously held as a matter of law that the Board incorrectly applied § 8(b)(1)(B) as interpreted in *Florida Power* to the instant cases. Under its view, the type of work actually performed by the supervisor-members is irrelevant, eith-

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*Implementation of the Guild's Strike Rule 30 by blacklisting supervisor-members was intended to and would prevent these individuals from continuing to work as producers, directors, story editors, and in other management positions where working with writers is essential. (Tr. pp. 690-92, 844-47.) As the Administrative Law Judge found:

> "The hyphenate-members were particularly vulnerable to pressure under rule 30 because in their primary work as producers, directors, story editors and executives, they would be unable to effectively function in the future if writer-members of Respondent refused to work for or with them. In telephone conversations with certain of the hyphenates, agents of Respondent emphasized this consequence should the hyphenate cross the picket line to work. The wife of one hyphenate-member was assured that Respondent would end her husband's rather distinguished career by not permitting writers to work with him if he crossed the picket line." (Networks' Pet. App. A at 23-24.)

er because the Board is not authorized by § 8(b)(1)(B) to make the determination that the Guild's conduct would be likely to adversely affect the supervisor-members' performance in their capacities of grievance adjusters and collective bargainers on behalf of their employers, or because the panel disagrees with the Board's determination of the issue. The Seventh and District of Columbia Circuits have unmistakably rejected both of these views and would have enforced the Board's order herein. As stated by Judge Sprecher of the Court of Appeals for the Seventh Circuit in *Wisconsin River Valley District Council of Carpenters v. NLRB*, 532 F.2d 47, 53 (C.A. 7 1976):

> "[F]lorida Power and its antecedents teach that the focus of a Section 8(b)(1)(B) inquiry rests on the nature of the supervisors' duties when discipline is imposed. Where supervisors cross picket lines to perform regular supervisory duties, union discipline violates Section 8(b)(1)(B) since it tends to deprive the employer of its supervisors' services—including their § 8(b)(1)(B) services—and because the supervisors would reasonably anticipate that union discipline would also be imposed if future performance of their § 8(b)(1)(B) functions did not meet with union approval."

See also Chicago Typographical Union No. 16 v. NLRB, No. 75-1320 (C.A.D.C. June 21, 1976), *enforcing* 216 N.L.R.B. No. 149 (1975), *petition for cert. filed*, 45 U.S.L.W. 3385 (Nov. 16, 1976).

Unlike the majority opinion herein, these decisions and Judge Moore's dissenting opinion properly read *Florida Power* as leaving for the Board to determine in each case whether union discipline of supervisor-members who do not perform rank-and-file struck work has the adverse future effect referred to in Florida Power.

Finally, the principle established by the court below allowing a union to discipline supervisor-members who are vested with grievance adjusting or collective bargaining authority and who perform solely their supervisory duties goes far beyond this Court's limited holding in *Florida Power*. Unless reversed it will have established a new and heretofore unexpected economic weapon which destroys entirely Congress' concept that the clear and fundamental division between management and labor be maintained, a concept which has become an integral part of the statutory framework regulating labor-management relations. The decision below provides the vehicle, and it encourages unions to force management and supervisory individuals who may retain some form of union membership to cease the performance of their management and supervisory duties. Such a dramatic change in the traditional economic weapons available to unions is not one that is readily suggested by *Florida Power** nor compatible with § 8(b)(1)(B).

B. The Supervisor-Members Herein Are Employer Representatives Vested With Grievance Adjusting or Collective Bargaining Authority Who Did Not Perform Rank-and-File Struck Work During the Guild's Strike.

The Guild has indicated, in its Opposition to the Petitions for Writs of Certiorari in these cases, that it will attempt to resurrect the issues whether the supervisor-members are employer representatives within the meaning of § 8(b)(1)(B) and whether they performed rank-and-file struck work during the strike,

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*The unions involved in *Florida Power* fined only those supervisor-members who performed rank-and-file struck work, 417 U.S. at 793-96, and conceded that supervisors who cross picket lines to perform supervisory duties are immune from discipline. *I.B.E.W. Local 134 v. NLRB*, 487 F.2d 1143, 1157 (D.C. Cir. 1973) (opinion on rehearing *en banc*).

despite the fact that the court below left undisturbed the findings of the Administrative Law Judge and the Board, who determined these very issues adversely to the Guild. (Guild's Brief in Opposition, p. 3.) As the following discussion demonstrates, the Board's findings that the supervisor-members are employer representatives vested with grievance adjusting or collective bargaining authority and that they did not perform rank-and-file struck work during the strike are supported by "substantial evidence on the record considered as a whole." 29 U.S.C. § 160(e); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951). Its findings herein are thus "entitled to the greatest deference in recognition of its special competence in dealing with labor problems" *American Shipbuilding Co. v. NLRB*, 380 U.S. 300, 316 (1965).

With respect to the status of the supervisor-members, the Administrative Law Judge, after carefully reviewing all the evidence, found that "the normal performance of the hyphenates' primary functions involves the adjustment of employee grievances, and, in the case of producers on distant location, to engage in collective bargaining with labor organizations." (Networks' Pet. App. A-41.) Therefore, he concluded that the supervisor-members herein "are supervisors within the meaning of Section 2(11) of the Act selected by their employers to adjust grievances, and, in the case of the producer function, to negotiate agreements with labor organizations within the meaning of Section 8(b)(1)(B) of the Act." (*Id.* at A-45.) These findings are amply supported by the record. (A. pp. 31-32, 62-63, 73-74, 107-08, 124-30, 140-41, 153-54.)

Despite the record evidence, the Guild contended below that the supervisor-members herein do not constitute § 8(b)(1)(B) representatives because there is no

evidence that they adjust writer's grievances.* However, there is no statutory or decisional support for the proposition that the employer representative contemplated by § 8(b)(1)(B) must adjust the grievances of members of the union which disciplines him. To the contrary, the Board has properly applied § 8(b)(1)(B) without regard to whether the management representative involved has any dealings with employees represented by the disciplining union. *Masters, Mates and Pilots*, 197 N.L.R.B. 400 (1972), *enforced*, 486 F.2d 1271, 1274 (C.A.D.C. 1973) (rejecting contention that § 8(b)(1)(B) "is concerned solely with attempts by a labor organization to change the person utilized by the employer to adjust the grievances of members of that same organization"). *See also International Organization of Masters, Mates and Pilots v. NLRB*, 539 F.2d 554, 559-560 (C.A.5 1976). The record evidence herein clearly demonstrates and the Guild does not dispute that the supervisor-members herein adjust grievances of many types of employees not represented by the Guild. (A. pp. 31-32, 62-63, 93-94, 107-08, 124-26, 153-54, 155-56.)

Furthermore, the finding that the supervisor-members herein do have the authority to adjust the grievances

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*The Guild has conceded that the supervisor-members (other than story editors) may adjust the grievances of employees other than writers. (A. p. 590.) The Guild has contended that story editors do not constitute § 8(b)(1)(B) representatives because they do not have the final authority to adjust grievances. However, the Board and the courts have consistently held that supervisors who participate in the initial discussions of employee complaints are representatives for the purpose of the adjustment of grievances within the meaning of § 8(b)(1)(B). *Meat Cutters Union Local 81 (Safeway Stores)*, 185 N.L.R.B. 884, 888 (1970), *enforced*, 458 F.2d 794 (C.A.D.C. 1972); *Sheet Metal Workers' International Association, Local Union 49 (General Metal Products, Inc.)*, 178 N.L.R.B. 139, 142 (1969), *enforced*, 430 F.2d 1348 (C.A.10 1970). The record clearly reflects that story editors constitute firstline grievance adjusters for writers. (A. pp. 54, 79, 109, 132.)

of writers is supported by the record. For example, at least two witnesses testified that producers and story editors make initial determinations of disputes regarding screen credits for writers. (A. pp. 54-55, 79.) Story editors also participate in the initial disposition of screen credit disputes, and they have the authority to adjust other grievances involving disagreements between writers and members of the production staff. (A. pp. 79, 132.) Finally, one witness described an incident in which a producer made the initial determination on behalf of management in a dispute involving whether or not a commitment had been made to hire a writer. (A. pp. 40-41.)

The Guild's contention below that the supervisor-members are not employer representatives within the meaning of § 8(b)(1)(B) because there is no evidence that they actually engaged in grievance adjustment or collective bargaining during the strike is equally without merit. As the Board and courts have uniformly held, it is the *authority* to adjust grievances, rather than the exercise of that authority during any particular period of time, which determines whether or not a supervisor is an employer representative within the meaning of § 8(b)(1)(B). *See, e.g., NLRB v. Rochester Musicians Association Local 66*, 514 F.2d 988, 991-993 (C.A.2 1975) (remanded for determination of whether supervisor had *authority* to adjust grievances); *Meat Cutters Union Local 81 v. NLRB, supra*, 458 F.2d at 798 (C.A.D.C. 1972) (since supervisor "concededly possessed the *authority* to adjust the grievances of the employees working under his direction," (emphasis supplied), he was a § 8(b)(1)(B) representative); *Meat and Provision Drivers Union Local 626, I.B.T. (Food Employers Council)*, 224 N.L.R.B. No. 40, 92 L.R.R.M. 1295, 1296 (1976), application for enforcement pending No. 76-2616 (C.A.9) (Board's

finding that supervisor-member "was the employer representative designated with the authority to adjust grievances").

Moreover, this argument of the Guild proves too much. Under the Guild's theory, there could be no coercion or restraint on employers in the selection of their grievance adjusters during a truly effective strike, because in such circumstances no employees would cross the picket line and be available to have their grievances adjusted.

With respect to the performance of rank-and-file struck work by the supervisor-members during the strike, the Administrative Law Judge found that "such writing as the hyphenates did during the strike was limited to that commonly accepted in the industry as part of the managerial and supervisory function and thus was not rank-and-file work." (Networks' Petition App. A at 42-43.) Moreover, the Guild "points to no instance of any hyphenate doing any 'rank-and-file' work during the strike." (*Id.* at A-41.) Accordingly, "[o]n the basis of the . . . record as a whole it is found . . . that those hyphenates involved in this matter who worked during the strike performed managerial and supervisory functions including the adjustment of grievances on [sic] collective bargaining as required, and did not perform rank-and-file work." (*Id.* at A-45-46.)

In the face of these conclusions, the Guild nevertheless contended below that the so-called (a) through (h) functions performed by supervisor-members during the strike constituted rank-and-file struck work so as to bring these cases within the parameters of *Florida Power*. This assertion, however, finds no support in the record.

The (a) through (h) functions were expressly excluded from the contractual definition of bargaining unit work. Article 14, paragraph A of the WGA-

Network Film Agreement specifically provided that the terms of employment of members engaged in capacities "other than as a writer . . . shall not be subject to this Basic Agreement." (A. p. 338.) Article I, paragraphs B.1.a and C.1.a of the Agreement provided that the performance of (a) through (h) duties "by Producers, Directors, Story Supervisors . . . [or] other employees . . . *shall not be subject to this Basic Agreement and such services shall not constitute such a person a writer hereunder.*" (A. pp. 317-18, 322-23; emphasis supplied.) Accordingly, it is beyond dispute that neither the Guild nor the employers deemed (a) through (h) functions to be rank-and-file work when performed by supervisors.

In addition, it is clear that the Guild itself did not regard the (a) through (h) functions as rank-and-file struck work when it disciplined the supervisor-members. Although several of the Guild's strike rules specifically prohibited the performance of bargaining unit work during the strike (*see, e.g.*, Rules 2-7), none of the Networks' supervisor-members were charged with violation of those rules. Instead, by the Guild's own admission, its prosecutor and disciplinary panels proceeded without regard to the nature of the services performed, and regarded crossing the picket line for any purpose as grounds for discipline. (A. pp. 160-61; Networks' Pet. App. A-28 n. 15.)

Moreover, whether or not the (a) through (h) functions may also be performed by bargaining unit employees, performance of these functions by supervisor-members during the strike manifestly did not involve the performance of rank-and-file struck work. The supervisor-members were not performing any functions that, but for the strike, would have been performed by the Guild's writer-members. To the contrary, as the Administrative Law Judge found,

> "The evidence is that the hyphenates who worked during the strike performed the normal functions of the primary positions for which they were employed prior to the strike, e.g., director, producer, story editor, etc. . . ." (Networks' Pet. App. A-28.)

This evidence is supported in the record. (A. pp. 137-38, 157, 178.) Thus not only did the Networks not request the supervisor-members to perform any rank-and-file struck work during the strike (A. pp. 531-32), the Networks followed a policy during the strike of not requiring supervisor-members to perform rank-and-file struck work. (A. pp. 175-76, 177-78; Networks' Pet. App. A-25.) Further, there is no evidence in the record that rank-and-file struck work was in fact performed by the supervisor-members. Accordingly, this contention of the Guild must likewise be dismissed.

II

The Guild's Contention, Accepted by the Court Below, That Florida Power Should Be Expanded to Permit Union Discipline of Supervisor-Members for Performing Solely Their Supervisory Duties Because There Is No Real Distinction Between the Performance of Normal Supervisory Duties and the Performance of Rank-and-File Struck Work Is Without Merit and Would Require This Court to Reconsider Such Distinction. If the Court Reconsiders Such Distinction, Florida Power Should Not Be Expanded but Should Be Overruled.

As set forth at pp. 25-26, *supra*, the Court's narrow holding in *Florida Power* was based entirely on the distinction drawn between the performance of normal supervisory duties and the performance of rank-and-file struck work. In its brief to the court below, the

Guild argued that this distinction is meaningless because if the absence of the supervisor-members is what restrains and coerces the employer in its selection of its representatives, this occurs no matter what work the supervisor-members perform. (Guild's Opening Brief to the Court of Appeals for the Second Circuit, at 14-15.) Thus, in the Guild's view, *Florida Power*'s rank-and-file struck work exception to § 8(b)(1)(B) should be expanded into a much broader crossing the-picket-line exception. The court below and Member Fanning have apparently agreed with this view. As will be shown below, however, *Florida Power*'s rank-and-file struck work exception to § 8(b)(1)(B) should not be expanded. Rather, if the Court is inclined to reconsider the merits of the distinction, *Florida Power* should be overruled.

The Court has often recognized the importance to the collective bargaining process contemplated by the Act and federal labor policy of the clear separation between management and labor which Congress attempted to achieve by the statutory assurance to employers of the undivided loyalty of their supervisors and managers and by the prohibition against treating supervisors or managers as employees. *Florida Power, supra,* 417 U.S. at 807-811. *See NLRB v. Bell Aerospace Co.,* 416 U.S. 267 (1974); *Beasley v. Food Fair of North Carolina, Inc.,* 416 U.S. 653, 661-662 (1974). Thus, Section 2(3) of the Act, 29 U.S.C. § 152(3), excludes supervisors and managers from the Act's definition of employees (*See NLRB v. Bell Aerospace, supra*), and Section 14(a) of the Act, 29 U.S.C. § 164(a), provides in relevant part that "[n]o employer . . . shall be compelled to deem . . . supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

The concern which prompted enactment of §§ 2(3) and 14(a) requires an interpretation of § 8(b)(1)(B) which is in harmony with §§ 2(3) and 14(a) and which effectuates Congress' purpose in enacting all three provisions. Each of these provisions was the result of the 1947 Taft-Hartley Amendments to the Act. 61 Stat. 137, 61 Stat. 140, 61 Stat. 151, Act of June 23, 1947. Congress was concerned that the previous interpretations of the Act by the Board and courts blurred the line between management and labor, thereby adversely affecting the free operation of the collective bargaining process envisaged by the Act.

As stated by Senator Ball:

> "The committee took the position that foremen are an essential and integral part of management, and that to compel management to bargain with itself, so to speak, by dividing the loyalties of foremen between the union and the employer, simply did not make sense, and inevitably would prove harmful to the free enterprise system." 93 Cong. Rec. 5014 (1947); II Legislative History of the Labor-Management Relations Act (GPO, 1948) (hereafter "Leg. Hist.") 1496.

Statutory provisions to establish a clear division between management and labor, between supervisors and rank-and-file employees, and between management representatives and labor representatives were extensively considered and debated. *See, e.g.* 93 Cong. Rec. 4136 (1947) (remarks of Senator Ellender), II Leg. Hist. 1064 (supervisors are "not to be considered as employees having bargaining rights under the Wagner Act"); S. Rep. No. 105, 80th Cong., 1st Sess. 12-17 (1947), I Leg. Hist. 303-308 ("unionizing supervisors under the Labor Act is inconsistent with the

purpose of the act"); 93 Cong. Rec. 3443 (1947) (remarks of Representative Gwinn), I Leg. Hist. 647 (foremen "are supposed to represent management" and "to be loyal to the management's point of view"). Congress in fact rejected a proposed compromise which "would have limited the protection of foremen to joining or organizing unions whose membership was confined to supervisory personnel and not affiliated with either of the major labor federations." S. Rep. No. 105, 80th Cong., 1st Sess. 4 (1947), I Leg. Hist. 410. *See also*, 93 Cong. Rec. 4899, 4903-04 (1947) (amendment proposed by Senator Murray and remarks of Senator Murray), II Leg. Hist. 1443, 1452. In Congress' view, the division between supervisors and employees required clear definition and was not subject to halfway measures. As stated by Senator Taft:

> "We tried various in-between steps, but the general conclusion was that they [supervisors] must either be a part of management or a part of the employees." 93 Cong. Rec. 3836 (1947), II Leg. Hist. 1009.

Accordingly, in enacting § 14(a), Congress undertook to guarantee that supervisors would not be subject to conflicting pressures on their loyalty:

> "[T]his section of the bill [§ 14(a)] is an example of the old adage, 'One cannot serve two masters.' It would be an utterly impossible position in which to place a man—he would be paid by his employer but he [would be] expected to go along with the union of which he was a member." 93 Cong. Rec. A 1910 (remarks of Representative Meade), I Leg. Hist. 868-69.

Similarly, the Senate Report noted:

> "It is natural to expect that unless this Congress takes action, management will be deprived of the undivided loyalty of its foremen. There is an inherent tendency to subordinate their interests wherever they conflict with those of the rank-and-file." S. Rep. No. 105, 80th Cong., 1st Sess. 5 (1947), I Leg. Hist. 411.

Clearly Congress was extremely concerned with securing supervisory and management loyalty to employers by means of these amendments, and all of the amendments, including § 8(b)(1)(B), should be interpreted in light of this concern.

The overall legislative history of the Taft-Hartley Amendments places in proper context the mechanisms Congress enacted to resolve the conflict-of-loyalties problem with which it was so concerned. Accordingly, supervisors are defined (§ 2(11)), they are excluded from coverage under the Act (§ 2(3)), employers are not compelled to treat them as employees (§ 14(a)) and, to the extent that they are representatives of their employer for the purposes of grievance adjusting or collective bargaining, labor organizations are prohibited from restraining or coercing employers in their selection (§ 8(b)(1)(B)). The legislative scheme presents a logical, coherent solution to the conflict-of-loyalties problem and effectuates the Act's overall purpose of "encouraging the practice and procedure of collective bargaining." § 1 of the Act, 29 U.S.C. § 151.

However, in carving out the narrow rank-and-file struck work exception to § 8(b)(1)(B), a bare majority of the Court stated that Congress "did not intend to make [§ 8(b)(1)(B)] any part of the solution to the generalized problem of supervisor-member conflict of loyalties." 417 U.S. at 813. The four dissenting Justices disagreed. In their opinion, § 8(b)(1)(B) is a vital part of the multi-faceted solution to the problem that so concerned Congress and the sec-

tion is violated when a union disciplines a supervisor who works for his employer during a strike irrespective of the nature of the work performed. Mr. Justice White stated:

> "Nothing in the language or legislative history of the statute contradicts the conclusion that '[w]hen a union disciplines a supervisor for crossing a picket line to perform rank-and-file work at the request of his employer, that discipline *equally* interferes with the employer's control over his representative and *equally* deprives him of the undivided loyalty of that supervisor as in the case where the discipline was imposed because of the way the supervisor interpreted the collective bargaining agreement or performed his "normal" supervisory duties.'" 417 U.S. at 815 (quoting from dissenting opinion below, 487 F.2d at 1176; footnote omitted.)

It is submitted that the dissent's interpretation of § 8(b)(1)(B) is in accord with the legislative history and the language of the statute. Certainly this legislative history and statutory language strongly militate against any further expansion of *Florida Power*. Moreover, while reversal of the court below in the instant cases is mandated under the Board's interpretation and application of *Florida Power* (*see* pp. 22-31, *supra*), *Florida Power* should nevertheless be reconsidered and overruled.

Florida Power's focus on the type of work performed by supervisor-members during a strike misses the mark. Rather than being neutral with respect to the conflict-of-loyalties problem with which Congress was so concerned, the decision exacerbates the problem. Moreover, the distinction between rank-and-file struck work and supervisory work implicit in *Florida Power* is one which

subsequent experience has shown to be extremely difficult to apply. Further, failure to construe § 8(b)(1)(B) as part of Congress' overall solution to the conflict-of-loyalties problem has deprived employers of their only effective means of ensuring supervisory loyalty in the midst of the collective bargaining process, the very situation in which the need for such loyalty is paramount.

The notion that union discipline of supervisor-members who perform rank-and-file struck work does not vitiate their loyalty to their employer does not take into account the realities of the collective bargaining process. Supervisors who perform struck work in order to enhance their employer's position during an economic strike are vitally involved in the collective bargaining process. They are as integral a part of the collective bargaining process whether, upon orders from their employer, they perform struck work, hire striker replacements, or work with and supervise employees who cross picket lines to work during the strike as are the employees who are striking and manning picket lines. As the Court has long recognized, the "use of economic pressure by the parties to a labor dispute . . . is part and parcel of the process of collective bargaining." *NLRB v. Insurance Agents' International Union*, 361 U.S. 477, 495 (1960). Thus by influencing the outcome of a strike through improving their employer's bargaining position, supervisor-members must certainly be considered representatives of their employer "for the purposes of collective bargaining . . . ." § 8(b)(1)(B), 29 U.S.C. § 158(B)(1)(b). As stated by Justice White, dissenting in *Florida Power:*

> "'As management representatives, supervisory personnel may be requested by management to enhance the bargaining position of their employer during a dispute between it and the particular

union involved.' 159 U.S. App. D.C. 272, 304, 487 F.2d 1143, 1175 (1973) (en banc) (dissenting opinion) (footnote omitted). Moreover, these union sanctions would unavoidably decrease a supervisor's loyalty to his employer and thereby materially interfere with the performance of those responsibilities which the employer quite properly demands of him." 417 U.S. at 814 (dissenting opinion).

As discussed *supra*, Congress certainly did not contemplate that § 8(b)(1)(B) would be interpreted in a manner which undercuts the fundamental distinction between management and labor and thereby makes more severe the conflict-of-loyalties problems. Yet that is precisely what *Florida Power*'s construction of § 8(b)(1)(B) does. The union discipline found permissible in that case converted the supervisor-members therein into ordinary employees for purposes of union fines. In so doing, that discipline deprived the employer of the loyalty of its chosen § 8(b)(1)(B) representative during the strike, the very time when such loyalty may be most essential.

The focus on the nature of the work supervisor-members may perform free of union discipline has also proved unwieldy in its application, thereby generating unwarranted uncertainties for employers with respect to the functions that they may expect of supervisor-members while the employers are preparing for or are engaged in collective bargaining negotiations. The numerous § 8(b)(1)(B) cases which have come before the Board since *Florida Power* involving discipline of supervisor-members who cross picket lines have required lengthy fact finding processes on the nature of the work performed behind the picket lines.* The Board

**New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 216 N.L.R.B. 896 (1975); *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, 216 N.L.R.B. 903 (1975) *enforced, Chicago Typographical Union No. 16 v. NLRB*, No. 75-1320 (C.A.D.C. June 21, 1976); *Bakery and Confectionery Workers Locals 24 & 119 (Food Employers Council, Inc.)*, 216 N.L.R.B. 917 (1975); *United Brotherhood of Carpenters, Local Union No. 14 (Kaplan Properties)*, 217 NLRB 202 (1975); *Local Union No. 1959, United Brotherhood of Carpenters, (Aurora Modular Industries)*, 217 N.L.R.B. 508 (1975); *Detroit Newspaper Printing Pressmen's Union, Local Union No. 13 (Observer Newspapers, Inc.)*, 217 N.L.R.B. 576 (1975); *Wisconsin River Valley District Council (Skippy Enterprises, Inc.)*, 218 N.L.R.B. 1063 (1975), *enforced*, 532 F.2d 47 (C.A.7 1976); *Warehouse Union Local 6 (Associated Food Stores, Inc.)*, 220 N.L.R.B. 809 (1975); *Glaziers and Glassworkers Local No. 1621 (Glass Management Assn.)*, 221 N.L.R.B. 509 (1975); *Newspaper Guild, Local 187 (Times Publishing)*, 222 N.L.R.B. 760 (1976); *Meat and Provision Drivers Union Local 626, I.B.T. (Food Employers Council)*, 224 N.L.R.B. No. 40 (1976), application for enforcement pending, No. 76-2616 (C.A. 9).

has thus had to wrestle with the problem of what constitutes "minimal" rank-and-file struck work in order to determine whether *Florida Power*'s rank-and-file struck work exception is controlling. *Hammond Publishers, Inc., supra*, 216 N.L.R.B. at 905-908; *Food Employers Council, Inc., supra*, 224 N.L.R.B. No. 40, 92 L.R.R.M. at 1296-97. This problem is compounded by the fact that in many situations supervisor-members have performed some rank-and-file work as a part of their normal duties prior to a strike, and the Board has had to make the difficult determination of whether or not such rank-and-file work was augmented during the strike, and, if not, whether *Florida Power* may nevertheless govern such cases. *Skippy Enterprises, Inc., supra*, 218 N.L.R.B. at 1063-1064; *Associated Food Stores, Inc., supra*, 220 N.L.R.B. at 809-810. The Board's experience in implementing the *Florida Power* distinction has thus clearly proved false the lower court's determination in *Florida Power* that "[t]he dividing line between supervisory and nonsupervisory work in

the present context is sharply defined and easily understood." 487 F.2d at 1157.

Finally, even *Florida Power*'s limited holding deprives employers of what may be their only effective means of ensuring their statutory right to treat supervisors *as* supervisors and to select and to retain loyal and effective collective bargainers and grievance adjusters. The Court suggested that employers could protect these rights by exercising their "option" of requiring supervisors to resign from union membership or of not hiring supervisors who are union members.* 417 U.S. at 812. The present cases clearly demonstrate, however, that neither of these options is realistic and that *Florida Power* is ripe for overruling. Unlike the employers in *Florida Power*, the Networks required their supervisor-members to perform supervisory work during the strike in accordance with the terms of the supervisor-members' personal service contracts. However, the Networks could not require their supervisor-members to resign from the Guild because the Guild refused to allow such resignations.** (A. p. 579.) Moreover, because so many members of management in the entertainment industry retain numerous guild and other union memberships because they may return to writer or other non-management status at some point in the future, the Networks, unlike the employers in *Florida*

*It is the Networks' contention that no such "option" was contemplated by Congress in its 1947 amendments to the Act. In the words of Circuit Judge McKinnon, dissenting from the court of appeals decision in *Florida Power:* "Congress did not give employers the means to *opt* for the undivided loyalty of their supervisors—it guaranteed it itself by enacting sections 2(3) and 14(a)." 487 F.2d at 1177.

**Even in situations where resignation is possible, its effectiveness is greatly undercut by the lack of knowledge on the part of union members of their ability to resign and the legal uncertainty of the limitations which unions may place on resignations. *See generally, Wellington, Union Fines and Workers' Rights,* 85 Yale L.J. 1022 (1976).

Power, could not protect their § 8(b)(1)(B) rights by refusing to hire supervisors who were union members. Due to the nature of the industry, the Networks could not realistically refuse to select individuals who retained some form of Guild membership as § 8(b)(1)(B) representatives or there would be very few qualified persons whom they could so select.

Accordingly, overruling *Florida Power* would allow for an interpretation of § 8(b)(1)(B) which effectuates Congress' resolution of the conflict-of-loyalties problem in a manner which is in harmony with all of the Act's provisions and with "the manifest purpose of the Congress to fashion a coherent national labor policy." *NLRB v. Drivers, Chauffeurs, Helpers Local Union No. 639*, 362 U.S. 274, 292 (1960).

Conclusion.

For the foregoing reasons, the judgment of the court of appeals should be reversed and the cases should be remanded to that Court with directions to enforce the Board's order.

Respectfully submitted,

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Dated: July 22, 1977.

Nos. 76-1121, 76-1153, and 76-1162

In the Supreme Court of the United States

OCTOBER TERM, 1977

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

AMERICAN BROADCASTING COMPANIES, INC., ET AL., PETITIONERS

v.

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC., PETITIONER

v.

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

	Page
Opinions below	2
Jurisdiction	2
Statute involved	2
Question presented	3
Statement	3
Summary of argument	9
Argument	11
The Board properly held that the Union violated Section 8(b)(1)(B) of the Act by threatening to discipline, and by disciplining, supervisor-members representing their employers for grievance adjustment or collective bargaining purposes, for crossing Union picket lines to perform supervisory functions during a strike	11
A. Under the test enunciated in *Florida Power*, a union's discipline of a supervisor-member violates Section 8(b)(1)(B) when that discipline may adversely affect the supervisor's duties as a grievance adjuster or collective bargainer on behalf of the employer	11
B. The Board properly concluded that the *Florida Power* test was satisfied here	15
Conclusion	20

CITATIONS

Cases: Page

Chicago Typographical Union No. 16 (Hammond Publishers, Inc.), 216 NLRB 903 ..... 8, 19
Chicago Typographical Union No. 16 v. *National Labor Relations Board*, 539 F. 2d 242, enforcing 216 NLRB 903, petition for certiorari pending, No. 76-688 9
Florida Power & Light Co. v. *International Brotherhood of Electrical Workers, Local 641*, 417 U.S. 790 ..... 9, 11, 13, 14, 16, 17, 20
General Teamsters Local Union No. 324 (Cascade Employers Association, Inc.), 127 NLRB 488 12
International Brotherhood of Electrical Workers v. *National Labor Relations Board*, 487 F. 2d 1143 14
Los Angeles Cloak Joint Board ILGWU (Helen Rose Co.), 127 NLRB 1543 12
Meat Cutters Union Local 81 v. *National Labor Relations Board (Safeway Stores)*, 459 F. 2d 794 12
New York Typographical Union No. 6 (Triangle Publications, Inc.), 206 NLRB 294 17
New York Typographical Union No. 6 (Triangle Publications, Inc.), 216 NLRB 896 ..... 8, 9
San Francisco-Oakland Mailers Union No. 18 (Northwest Publications, Inc.), 172 NLRB 2173 (69 LRRM 1157) 12

Cases—Continued Page

Toledo Locals No. 15-P and 272, Lithographers Union (Toledo Blade), 175 NLRB 1072, enforced, 437 F. 2d 55 17
Wisconsin River Valley District Council v. *National Labor Relations Board*, 532 F. 2d 47 ..... 9, 13, 18, 19

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) 2
Section 2(3), 29 U.S.C. 152(3) 2, 14
Section 2(11), 29 U.S.C. 152(11) (B) 3, 4, 15
Section 8(b)(1)(B), 29 U.S.C. 158 (b)(1)(B) ..... *passim*
Section 14(a), 29 U.S.C. 164(a) 14

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a)[1] is reported at 547 F. 2d 159. The decision and order of the National Labor Relations Board (Pet. App. 10a-76a) are reported at 217 NLRB 957.

JURISDICTION

The judgment of the court of appeals (Pet. App. 8a-9a) was entered on November 22, 1976. The petitions for writs of certiorari were filed on February 14, 1977 (No. 76-1121), and February 22, 1977 (Nos. 76-1153 and 76-1162). The petitions were granted and the cases were consolidated on April 25, 1977 (A. 593-595). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act ("Act") as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

Section 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, * * * but shall not include * * * any individual employed as a supervisor * * *.

* * * * *

[1] "Pet. App." refers to the appendix to the petition for certiorari in No. 76-1162. "A." refers to the appendix to the briefs filed herewith. "Tr." refers to the transcript of testimony before the Board. "GCX" refers to the General Counsel's Exhibits before the Board.

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

Section 8. * * *

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce * * * (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

* * * * *

QUESTION PRESENTED

Whether a union violates Section 8(b)(1)(B) of the National Labor Relations Act by threatening to discipline, and by disciplining, supervisor-members, who represent their employers for grievance adjustment or collective bargaining purposes, for crossing union picket lines to perform supervisory functions during a strike.

STATEMENT

1. Since 1970, Writers Guild of America, West, Inc. ("the Union") has represented for collective bargaining purposes those writers who prepare scripts for

motion picture and television films and who are employed by the major television broadcasting companies [2] and by various member firms of the Association of Motion Picture and Television Producers, Inc. ("the Employers") (Pet. App. 20a; A. 8-9, 21). The Employers also employ producers, directors and story editors to manage the production of the films (Pet. App. 25a-30a; A. 9-10, 21). Producers, directors and story editors acting as such are supervisors as defined in Section 2(11) of the Act; they also represent the Employers in the adjustment of grievances within the meaning of Section 8(b)(1)(B) (Pet. App. 12a n. 5, 26a-27a, 27a, 30a, 62a; A. 32-35, 590). In certain situations, producers represent the Employers in collective bargaining within the meaning of Section 8(b)(1)(B) (Pet. App. 26a; A. 41-42).

Certain members of the Union, known as "hyphenates," are capable of performing, and do perform, more than one function (Pet. App. 22a; A. 56-57). For example, a writer may be engaged to produce scripts he has written or to direct the photoplay made from such a script (Pet. App. 34a; A. 210-212; Tr. 623-625). Many hyphenates, however, including those involved in this case, are simply former writers who now work almost exclusively in their non-writing "primary function" as producer, director, or story editor, but have retained their membership in the Union (Pet. App. 21a-22a, 61a-62a; A. 81, 126; Tr. 697-698).

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[2] American Broadcasting Companies, Inc., CBS Inc., and National Broadcasting Company, Inc.

The Union represents hyphenates only when they are employed as writers to perform creative or "rank-and-file" writing functions. The Union does not represent hyphenates when they are employed as producers, directors or story editors. Most hyphenates have personal service contracts with the Employers covering employment in their primary functions (Pet. App. 40a; Tr. 72-74). Accordingly, the collective bargaining agreements between the Union and the Employers provide a union member is not subject to those agreements when he is employed in a non-writing capacity (as, for example, a producer, director or story editor). The agreements further provide that producers, directors, and story editors can perform certain ancillary writing services, known collectively as the "'(A) to (H)' functions," without becoming a "writer" subject to the agreements (Pet. App. 32a-33a; A. 236-237, 240-240a, 317-318, 322-323, 338).[3]

---

[3] The writing services, as set forth in the agreements, are (Pet. App. 33a; A. 237, 240a, 318, 322):

(a) Cutting for time,
(b) Bridging material necessitated by cutting for time,
(c) Changes in technical or stage directions,
(d) Assignment of lines to other existing characters occasioned by cast changes,
(e) Changes necessary to obtain continuity acceptance or legal clearance,
(f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography,
(g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.),

2. In February 1973, in anticipation of an economic strike against the Employers, the Union distributed strike rules to all Union members, including hyphenates (Pet. App. 21a; A. 11, 21). In addition to prohibiting writing for struck employers, the rules prohibited all members—specifically including those working in non-writing capacities—from crossing Union picket lines and warned that violations would result in disciplinary action; the strike rules also prohibited Union members from working in the future with members suspended because of strike-rule violations (Pet. App. 35a-38a; A. 15-20).[4] The Union called a special meeting of hyphenate members at which a Union official announced that the strike rules would apply to hyphenates working in any capacity (Pet. App. 42a-43a; A. 11, 21, 88, 106). Other Union officials telephoned hyphenates before and during the strike to warn that they would be disciplined and blacklisted if they worked during the strike (Pet. App. 38a-39a, 42a-43a; A. 122, 147, 180). The Union refused to allow any members, including hyphenate

(h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding story or teleplay.

[4] The Administrative Law Judge found that hyphenates were "particularly vulnerable" to the blacklisting rule because they would be unable to function effectively as directors, producers or story editors if writers refused to work with them (Pet. App. 39a; A. 50-51; Tr. 690-691). Although the Union rescinded the rule itself after the present action was begun (Pet. App. 39a-40a), there was evidence that the Union nonetheless encouraged a "voluntary blacklist." See Pet. App. 69a-70a; A. 537, 540.

members, to resign from membership before or during the strike (Pet. App. 23a-24a; A. 579).

In March 1973, the Union began an economic strike against the Employers (Pet. App. 21a; A. 10-11, 22). The Employers demanded that hyphenates continue to perform their duties "other than as a writer" (Pet. App. 40a-42a; A. 176-178). Many hyphenates crossed Union picket lines in violation of Union strike rules to perform their non-writing functions (Pet. App. 43a-44a; A. 136-138, 157, 178). Most, if not all, advised their employer and the Union that they would not do any rank-and-file writing (Pet. App. 43a) and no hyphenate in fact did any rank-and-file writing during the strike (Pet. App. 59a; A. 177-179).[4]

The hyphenates did, as producers, directors and story editors, exercise their normal supervisory and managerial authority including the adjustment of grievances among non-striking employees (Pet. App. 44a and n. 16, 60a; A. 137, 157, 194, 202-204, GCX 16B, p. 25, GCX 16D, p. 49, GCX 16E, p. 74).

The strike continued against some Employers until July 1973 (Pet. App. 21a; A. 10-11, 22). During and after the strike, the Union filed charges against 31 hyphenates alleging that they had violated strike rules, primarily by crossing Union picket lines (Pet. App. 24a; A. 12, 21).[5] Ten hyphenates were subse-

[4] See also A. 103-104, 137, 139-140, 151, 157, 158, 181, 183, 184-186, 193, 194, 195, 196-197, 200, 203-205, 206, 208, 209, 214-215, 215-216, 217-218, 220-221, 223, 225, 226-227, 229, 230, 231, 232.

[5] Charges filed against some members included an allegation of "conduct prejudicial to the welfare of the Guild" (*Id.* at 20).

quently convicted by Union trial committees; the convicted hyphenates were suspended or expelled from Union membership and were fined amounts ranging from $100 to $50,000 (Pet. App. 45a-46a; A. 12-13, 22). Later the Union membership voted to reduce the penalties of nine of the convicted hyphenates (Pet. App. 46a; A. 583). The Union also announced that all further disciplinary proceedings involving hyphenates would be stayed pending adjudication of the unfair labor practice charges, which meanwhile had been filed by the Employers (Pet. App. 46a; A. 583).

3. The Board (with Member Fanning[7] dissenting) held that the Union violated Section 8(b)(1)(B) of the Act by disciplining and threatening to discipline the hyphenates (Pet. App. 10a-14a, 69a). Affirming the Administrative Law Judge, the Board concluded that the Union "restrained and coerced" the hyphenates from performing their supervisory duties—including grievance adjustment (and collective bargaining in the case of producers)—during the strike (Pet. App. 62a-64a), "and thus coerced and restrained [the] employers in the selection of representatives for collective bargaining and the adjustment of grievances within the meaning of Section 8(b)(1)(B) * * *" (Pet. App. 62a). The Board also relied upon two prior decisions[8] that union discipline of supervisors

[7] Member Fanning was designated Chairman on April 14, 1977.

[8] *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, 216 NLRB 903; *New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 216 NLRB 896.

for crossing picket lines to perform supervisory duties was likely to affect future performance of supervisory duties, including grievance adjustment or collective bargaining (Pet. App. 13a n. 6). The Board entered an appropriate remedial order (Pet. App. 13a, 73a-76a).

Member Fanning dissented for the reasons set forth in his dissenting opinion in *New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 216 NLRB 896, 897-902 (Pet. App. 14a). There he expressed the view that, under the principles enunciated in *Florida Power & Light Co.* v. *International Brotherhood of Electrical Workers, Local 641*, 417 U.S. 790, union discipline of supervisors violated Section 8(b)(1)(B) only where the discipline was imposed for the manner in which the supervisors performed their actual grievance adjustment or collective bargaining functions.

4. A divided court of appeals, agreeing with Member Fanning, denied enforcement of the Board's order (Pet. App. 1a-9a).[9]

SUMMARY OF ARGUMENT

Under *Florida Power and Light Co.* v. *International Brotherhood of Electrical Workers*, 417 U.S. 790,

[9] The decision of the court of appeals conflicts with the decisions of two other courts of appeals. See *Wisconsin River Valley District Council* v. *National Labor Relations Board*, 532 F. 2d 47 (C.A. 7); *Chicago Typographical Union No. 16* v. *National Labor Relations Board*, 539 F. 2d 242 (C.A. D.C.), enforcing 216 NLRB 903, petition for certiorari pending, No. 76-688.

union discipline of a member-supervisor "can constitute a violation of § 8(b)(1)(B) * * * when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." 417 U.S. at 804-805. In this case, the Union did everything in its power to coerce hyphenates into refusing to work for the Employers, even in a supervisory capacity, during the strike. Had the coercion succeeded, the Employers would have been deprived of their chosen representatives for grievance adjustment and collective bargaining no less than if the Union had directly pressured the Employers into removing those representatives from their duties.

In addition to the threats of discipline, the discipline itself violated Section 8(b)(1)(B) because a disciplined supervisor may well refuse to risk future discipline by crossing picket lines in future strikes. The discipline thus deprives the employer of his chosen representatives for the duration of such future strikes. Moreover, the Union's blacklisting of disciplined members could have coerced the Employers into discharging disciplined hyphenates to avoid a walkout by rank-and-file writers refusing to work with blacklisted supervisors.

A Section 8(b)(1)(B) violation does not require that the Union discipline be imposed for specific instances of grievance adjustment, and it is not necessary that the disciplined supervisor actually performed any grievance adjustment or collective bargaining, so long as he was authorized to do so in the

normal performance of his supervisory duties. His protected status in crossing the picket line should not depend on the fortuity of whether he is actually called upon to adjust a grievance thereafter.

ARGUMENT

THE BOARD PROPERLY HELD THAT THE UNION VIOLATED SECTION 8(b)(1)(B) OF THE ACT BY THREATENING TO DISCIPLINE, AND BY DISCIPLINING, SUPERVISOR-MEMBERS REPRESENTING THEIR EMPLOYERS FOR GRIEVANCE ADJUSTMENT OR COLLECTIVE BARGAINING PURPOSES, FOR CROSSING UNION PICKET LINES TO PERFORM SUPERVISORY FUNCTIONS DURING A STRIKE.

A. Under the test enunciated in *Florida Power*, a union's discipline of a supervisor-member violates Section 8(b)(1)(B) when that discipline may adversely affect the supervisor's duties as a grievance adjuster or collective bargainer on behalf of the employer.

Section 8(b)(1)(B) of the Act provides that "[i]t shall be an unfair labor practice for a labor organization * * * to restrain or coerce * * * an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." In *Florida Power*, *supra*, this Court reviewed the Board's interpretation of Section 8(b)(1)(B) since the provision was enacted in 1947. 417 U.S. at 798-802. As the Court noted, the Board originally applied Section 8(b)(1)(B) to situations "clearly falling within the metes and bounds of the statutory language" (*id.* at 798)—i.e., where the union had struck or otherwise exerted direct pressure against an employer to force replacement of the representative whom

he had selected for purposes of grievance adjustment or collective bargaining, or to compel the employer to bargain in a multi-employer unit.[10] Subsequently, the Board, with court approval, applied Section 8(b)(1)(B) to prohibit union discipline of such management representatives who were union members for the manner in which they performed their grievance adjustment and collective bargaining functions, or other supervisory duties. As the Board explained in *San Francisco-Oakland Mailers Union No. 18 (Northwest Publications, Inc.)*, 172 NLRB 2173 (69 LRRM 1157, 1158):

> That [the union] may have sought the substitution of attitudes rather than persons, and may have exerted its pressure[s] upon the [Employer] by indirect rather than direct means, cannot alter the ultimate fact that pressure was exerted here for the purpose of interfering with the [Employer's] control over its representatives. Realistically, the Employer would have to replace its foremen or face *de facto* nonrepresentation by them.[11]

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[10] See *Los Angeles Cloak Joint Board ILGWU (Helen Rose Co.)*, 127 NLRB 1543; *General Teamsters Local Union No. 324 (Cascade Employers Association, Inc.)*, 127 NLRB 488.

[11] As the District of Columbia Circuit further explained in *Meat Cutters Union Local 81* v. *National Labor Relations Board (Safeway Stores)*, 458 F. 2d 794, 798-799:

> The 'conduct of the Union [in disciplining a supervisor-member] could very well be considered as an endeavor to apply pressure on the supervisory employees of the [Company], and to interfere with the performance of the duties which the employer required them to perform * * * and to influence them to take action which it, the employer, might deem detrimental to its best interests. This conduct of the union would further operate to make the employees reluctant in the future to take a position adverse to the union, and their usefulness to their employer would thereby be impaired.'

In *Florida Power*, the Board extended Section 8(b)(1)(B) further, to prohibit union discipline of supervisors for performing rank-and-file work during a strike. The Court rejected that further extension of Section 8(b)(1)(B). In such circumstances, the threat of union discipline, if it succeeded in keeping the supervisors away from work, would not have deprived the employer of his chosen representatives for the performance of grievance adjustment, collective bargaining, and other supervisory functions.[12] And it could not reasonably be assumed that discipline for performing rank-and-file work would affect the subsequent performance of collective bargaining, grievance adjustment, or activities related thereto. Accordingly, the union discipline in that case could have been found to violate Section 8(b)(1)(B) only on the premise that it would tend to deprive the employer of the full loyalty of his supervisors. 417 U.S. at 805-807. The Court concluded that, while this concern is "a very real one," Congress addressed it, "not through § 8(b)(1)(B), but through a completely different legisla-

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[12] "[W]here supervisors cross picket lines to perform rank-and-file struck work, union discipline does not violate Section 8(b)(1)(B) since it merely deprives the employer of services normally rendered by strikebreaking replacement employees." *Wisconsin River Valley District Council* v. *National Labor Relations Board*, *supra*, 532 F. 2d at 53.

tive route." 417 U.S. at 807. That is, "Congress sought to assure the employer of the loyalty of his supervisors" (*id.* at 808) by excluding supervisors from the coverage of the Act (see Section 2(3), 29 U.S.C. 152(3)) and by leaving an employer free to refuse to hire, or to discharge, a supervisor because of his union membership (see Section 14(a), 29 U.S.C. 164(a)).

However, the Court recognized that "a union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8(b)(1)(B) * * * when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." 417 U.S. at 804-805. In commenting on this test, Mr. Justice White stated in dissent: "I do not read the Court to say that § 8(b)(1)(B) would allow a union to discipline supervisor-members for performing supervisory or management functions, as opposed to customary rank-and-file work, during a labor dispute." *Id.* at 815 n.2.[13]

[13] Similarly, the District of Columbia Circuit's decision in *Florida Power*, which this Court affirmed, noted that "[t]he unions participating in the present cases conceded * * * at oral argument * * * that when a supervisor crosses a picket line to perform *supervisory* work he remains immune from discipline" (emphasis in original). *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 487 F. 2d 1143, 1157 (C.A. D.C.). Judge MacKinnon, dissenting, stated without challenge that "there is unanimous agreement on this court that section 8(b)(1)(B) prohibits union discipline of supervisory personnel for acts performed by them in the course of their supervisory or managerial duties." *Id.* at 1174.

B. The Board properly concluded that the *Florida Power* test was satisfied here.

There can be no doubt that the hyphenates were supervisors who possessed and exercised the authority to adjust grievances or bargain collectively on behalf of the Employers, within the meaning of Section 8(b)(1)(B).[14] It is likewise plain that the Union did everything in its power to coerce members into refusing to work for struck Employers even in a supervisory capacity. The Union conducted a special prestrike meeting to warn hyphenates that they would be subject to the discipline provided in the strike rules if they worked in their supervisory capacities during the strike (Pet. App. 42a-43a). This message was emphasized by "publicity, and through personal con-

[14] Before the Board, the Union conceded that executives, producers, and directors are supervisors as that term is defined in Section 2(11) of the Act and represent the Employers for the purposes of grievance adjustment (A.590). It is immaterial that they adjusted grievances only of actors, cameramen, and other non-writing employees (Br. in Opp. 3). The Employers were entitled to their chosen representatives for the adjustment of the grievances of their non-writing employees, no less than of their writers.

The Board's finding that story editors function as statutory supervisors and Section 8(b)(1)(B) representatives is supported by substantial evidence on the record as a whole. Witnesses testified that story editors effectively recommend the hiring and firing of writers (A. 48-50, 64, 109, 121-122, 130, 132), oversee and edit the writers' work (A. 48-49, 64, 82-86, 109, 132, 166), and resolve or attempt to resolve writers' grievances (A. 54-55, 79, 109, 121, 132).

tact, memos, telegrams and letters * * *" (Pet. App. 38a). The coercive impact of the strike rules upon the hyphenates was further accentuated by the Union's refusal to allow hyphenates to resign from membership, or otherwise avoid the threatened discipline, before and during the strike.

The obvious purpose of such actions was to force the hyphenates to honor the Union's picket lines and thus to cease performing their "supervisory or management functions," necessarily including grievance adjustment and collective bargaining, for the duration of the strike. Hence, if the hyphenates had succumbed to the Union's threats of discipline and other pressure and had refused to cross the picket lines, the Employers would have been deprived of their chosen representatives for the performance of those functions for the duration of the strike, no less than if the Union had directly pressured the Employers into removing those representatives from those duties.[15]

Moreover, as for those hyphenates who defied the Union, crossed the picket lines, and were disciplined, the likely effect of such discipline is to deprive the Employers of their collective bargaining or grievance adjustment services in the future.[16] If a union

---

[15] It is well established that a violation of Section 8(b)(1)(B) does not depend on the ultimate success of the union's attempts at restraint or coercion. See, *e.g.*, *Florida Power*, *supra*, 417 U.S. at 798-799, 803, 804 n. 15.

[16] In some cases, disciplinary proceedings were instituted against a hyphenate while the Union was still on strike against his employer or the other employers (Pet. App. 21a, 24a, 44a-45a). In those cases, the Union discipline, like the pre-

member who is a supervisor is suspended, fired, or otherwise disciplined for crossing a picket line during a strike to perform collective bargaining or grievance adjustment duties, he necessarily will think twice about crossing the union's picket lines in a future strike though only the same duties are required. If the discipline serves its intended deterrent purpose,[17] the member will not again cross the lines to carry out those duties, and that decision will deprive the employer of his chosen management representatives for the duration of any subsequent strike.[18]

Indeed, the Union's strike rules were such that the Employers were likely to be deprived of their selected representatives' services even apart from a subsequent strike. Since the rules prohibited Union members from working with disciplined members, an

---

strike threats of discipline, would have an impact on the present strike. It would make those hyphenates who were refusing to cross the picket lines even more reluctant to do so.

[17] The reduction of disciplinary penalties by the Union membership in this case (see p. 8, *supra*) does not eliminate the coercive impact of the Union's actions. One hyphenate remains suspended, several substantial fines remain assessed, and charges against many other hyphenates are currently held in abeyance pending the outcome of this litigation (Pet. App. 46a; A. 544-547, 583). Nor is there any assurance that the Union's membership would vote to reduce future discipline imposed by its leadership. See *Toledo Locals No. 15-P and 272, Lithographers Union (Toledo Blade)*, 175 NLRB 1072, 1079, enforced, 437 F. 2d 55 (C.A. 6); *New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 206 NLRB 294, 295.

[18] In *Florida Power*, by contrast, the supervisors were disciplined for crossing the picket lines to perform rank-and-file

employer who retained a disciplined hyphenate risked a post-strike walkout by his entire writing force, making that hyphenate virtually useless to his employer following the strike. The Union's blacklisting rule (and the actions following nominal rescission of that rule, see note 4, *supra*) therefore may have brought about a situation where the employer would be permanently deprived of the hyphenate's supervisory services following the strike.

Hence, contrary to the view of the dissenting Board Member, it is not necessary to show that the union's discipline was imposed in response to specific acts of grievance adjustment or collective bargaining which the supervisor performed during the strike. It is sufficient, to make out a violation of Section 8(b)(1)(B), that the union disciplined, or threatened to discipline, members for crossing picket lines to perform supervisory duties which included grievance adjustment or collective bargaining. For, as shown, such action can as readily deprive the employer of his chosen representatives for the performance of those duties as would discipline directed at the manner in which they were performed. See *Wisconsin River Valley District Council* v. *National Labor Relations Board*, *supra*, 532 F. 2d at 53.

By the same token, it is immaterial whether a hyphenate who was authorized to adjust grievances

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work. Implicit in the Court's holding is the conclusion that the only predictable effect of such discipline would be to deter the supervisors from again crossing picket lines to perform rank-and-file work. See note 12, *supra*.

was in fact called upon to do so during the strike. Because the Act proscribes restraint or coercion in the *selection* of representatives, the legality of the union's discipline should not be made to turn upon the wholly fortuitous (and, for the union, wholly irrelevant) occurrence of an actual grievance among non-striking employees. Both the Employer and the supervisor are entitled to know before the supervisor crosses a picket line to perform supervisory duties whether the supervisor can lawfully be disciplined by the Union for such an act. If the supervisor must depend upon the development of an actual grievance to protect, *nunc pro tunc*, his action, he may well decide not to risk the discipline and refuse to cross the picket line altogether.[19]

For these reasons, the Board properly concluded that the Union's threats of discipline, and the discipline itself, were likely to "adversely affect" the hyphenates' "conduct in performing the duties of, and

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[19] Moreover, the Union's discipline of a supervisor with grievance adjustment or collective bargaining authority for crossing a picket line would be likely to affect the manner in which those functions are performed in the future. The supervisory functions performed during the strike are similar to those which the supervisor will perform later. Hence, the Board could reasonably conclude that the supervisor will perceive a connection between the performance of supervisory functions and the discipline, and modify his future performance of those functions, including grievance adjustment or collective bargaining, to avoid antagonizing the union. *Wisconsin River Valley District Council of Carpenters* v. *National Labor Relations Board*, *supra*, 532 F. 2d at 53; *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, *supra*, 216 NLRB at 904-905.

acting in [their] capacity as, grievance adjuster or collective bargainer on behalf of the employer[s]" (*Florida Power, supra*, 417 U.S. at 804-805), and that therefore the Union violated Section 8(b)(1)(B) of the Act.

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded to that court with instructions to enforce the Board's order.

Respectfully submitted.

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SUBJECT INDEX

Page

Statement of the Case 2

A. Introduction 2

B. Some of the Supervisors Performed Some Rank-and-File Work During the Strike 3

C. The Supervisors Have No Guild-Connected Collective Bargaining or Grievance Adjustment Functions 6

D. Irrelevant Issues 7

Summary of Argument 8

I.

No Supervisor Was Disciplined for the Purpose, or With the Effect of Restraining or Coercing His Employer in the Selection of a Bargaining or Grievance Adjustment Representative 8

II.

Florida Power Need Not Be Reviewed but Needs Only to Be Properly Applied by the Board 10

Argument 11

I.

No Supervisor Was Disciplined for the Purpose, or With the Effect of Restraining or Coercing His Employer in the Selection of a Bargaining or Grievance Adjustment Representative 11

A. Introduction 11

B. The Board's Reading of § 8(b)(1)(B) Conflicts With the Act's Language and Intent, and With This Court's Decision in Florida Power 16

Page

1. There Was No Unlawful Object or Effect to the Discipline 16
   a. The Guild's Object in Imposing Discipline Was Lawful and Does Not Warrant an Inference of Illegality 16
   b. The Board's Inference of Illegality Lacks an Evidentiary or Logical Basis 21
      i. There Was No Evidentiary Basis for the Inference 21
      ii. There Is No Logical Basis for the Board's Inference.. 24
2. The Supervisors' Failure to Show Up for Work, Whether as a Result of Discipline or Otherwise, Does Not Violate § 8(b)(1)(B) 30
3. The Board's Decision Results in an Unwarranted Interference With the Bargaining Process, and an Inequitable Treatment of Supervisors 32

II.

Florida Power Need Not Be Reviewed, But Needs Only to Be Properly Applied by the Board 36

Conclusion 38

TABLE OF AUTHORITIES CITED

Cases — Page

Bakery Workers Local 24 (Food Employers Council, Inc.), 216 N.L.R.B. 917 (1975) 15

Beasley v. Food Fair, 416 U.S. 653 (1974) 31

Booster Lodge 405, IAM v. NLRB, 413 U.S. 84 (1973) 7

Burlington Truck Lines, Inc. v. U.S., 371 U.S. 156 (1962) 30

Chicago Typographical Union 16 (Hammond Publishers, Inc.), 216 N.L.R.B. 903 (1975) 14, 15, 16, 23, 26

Detroit Pressmen's Union, Local 13 (Observer Newspapers), 217 N.L.R.B. 576 (1975) 15

Florida Power & Light Co. v. IBEW, Local 641, 417 U.S. 790 (1974) 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 19, 21, 23, 24, 26, 28, 29, 31, 32, 33, 35, 36, 37, 38

H. K. Porter Co. v. NLRB, 397 U.S. 99 (1970) 34

Honolulu Star-Bulletin, Ltd. v. NLRB, 270 F.2d 567 (D.C. Cir. 1959) 30

IBEW v. NLRB (Florida Power & Light Co.), 487 F.2d 1143 (D.C. Cir. 1973) 29

IBEW Sys. Council U-4 (Florida Power & Light Co.), 193 N.L.R.B. 30 (1971) 13

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International Organization of Masters, Mates & Pilots v. NLRB, 486 F.2d 1271 (D.C. Cir. 1973) 26

Page

International Organization of Masters, Mates & Pilots v. NLRB, 539 F.2d 554 (5th Cir. 1976) .. 26

Local 453, Bhd. of Painters (Syd Gough & Sons), 183 N.L.R.B. 187 (1970) 27

Local 76, IAM v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976) 18

Local 2150, IBEW (Wisconsin Elec. Power Co.), 192 N.L.R.B. 77 (1971), enforced, 486 F.2d 602 (7th Cir. 1973) 13

Local 357, International Brotherhood of Teamsters v. NLRB, 365 U.S. 667 (1961) 20

Local 761, Int'l Union of Electrical Workers v. NLRB (General Elec.), 366 U.S. 667 (1961) 31

Local 1959, United Bhd. of Carpenters (Aurora Modular Indus.), 217 N.L.R.B. 508 (1975) 15

Local 1976, United Bhd. of Carpenters v. NLRB, 357 U.S. 93 (1958) 11

Local 60, United Brotherhood of Carpenters v. NLRB, 365 U.S. 651 (1961) 20, 30

Lodge 76, IAM v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976) 34, 35, 38

Meat Cutters Union Local 81 v. NLRB (Safeway Stores), 458 F.2d 794 (D.C. Cir. 1972) 27

New Mexico Dist. Council of Carpenters (A. S. Horner, Inc.), 176 N.L.R.B. 797 (1969) 12

New Mexico Dist. Council of Carpenters (A. S. Honer, Inc.), 177 N.L.R.B. 500 (1969) 12

New York Typographical Union Local 6 (Triangle Publications, Inc.), 216 N.L.R.B. 896 (1975) 27, 28

Page

NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 (1967) 17, 19

NLRB v. American Cable System, Inc., 427 F.2d 446 (5th Cir. 1970) 29

NLRB v. Barberton Plastic Prods., 354 F.2d 66 (6th Cir. 1965) 21

NLRB v. Boeing Co., 412 U.S. 67 (1973) 7

NLRB v. Century Broadcasting Co., 419 F.2d 771 (8th Cir. 1969) 21

NLRB v. Drivers Local 639 (Curtis Bors.), 362 U.S. 274 (1960) 18, 31, 32

NLRB v. Englander Co., 260 F.2d 67 (9th Cir. 1959) 21

NLRB v. Erie Resistor Corp., 373 U.S. 221 (1963) 18

NLRB v. General Motors Corp., 373 U.S. 734 (1963) 38

NLRB v. Granite State Joint Board, 409 U.S. 213 (1972) 16, 17

NLRB v. Howell Automatic Mach. Co., 454 F.2d 1077 (6th Cir. 1972) 21

NLRB v. Insurance Agents' Union, 361 U.S. 477 (1960) 18, 20, 34

NLRB v. International Rice Milling Co., 341 U.S. 665, 672-73 (1951) 31

NLRB v. News Syndicate Co., 365 U.S. 695 (1961) 20, 33

NLRB v. Rochester Musicians Ass'n Local 66, 514 F.2d 988 (2d Cir. 1975) 23

Page

NLRB v. Sheridan Creations, Inc., 357 F.2d 245 (2d Cir. 1966), cert. denied, 385 U.S. 1005 (1967) 36

Northern Petrochem. Co. v. NLRB, 469 F.2d 352 (8th Cir. 1972) 21

Radio Officers' Union v. NLRB, 347 U.S. 17 (1954) 19, 20, 22, 24

Retail Associates, Inc., 120 N.L.R.B. 388 (1958).. 36

San Francisco-Oakland Mailers' Union 18 (Northwest Pub., Inc.), 172 N.L.R.B. 2173 (1968) 12

Scofield v. NLRB, 394 U.S. 423 (1969) 34

SEC v. Chenery, 332 U.S. 194 (1947) 30

Triangle Publications, 216 N.L.R.B. 900 .....28, 29, 32

United Bhd. of Carpenters, Local 14 (Max M. Kaplan Properties), 217 N.L.R.B. 202 (1975) 15

United Steelworkers v. NLRB (Carrier Corp.), 376 U.S. 492 (1964) 31

Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951) 3, 22

Wisconsin Electric Power Co., 192 N.L.R.B. 77 (1971) 13

Wisconsin River Valley Dist. Council of Carpenters (Skippy Enterprises), 218 N.L.R.B. 1063 (1975), aff'd, 532 F.2d 47 (7th Cir. 1976) 15

Dictionary

Webster's New Collegiate Dictionary (1975) 15

Miscellaneous Page

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Statutes

National Labor Relations Act, Sec. 2(3), 29 U.S.C. Sec. 152(3) 31, 37

National Labor Relations Act, Sec. 2(11), 29 U.S.C. Sec. 152(11) 22, 23, 37

National Labor Relations Act, Sec. 8(a)(3), 29 U.S.C. Sec. 158(a)(3) 20

National Labor Relations Act, Sec. 8(b)(1)(A) 19, 31

National Labor Relations Act, Sec. 8(b)(1)(B), 29 U.S.C. Sec. 158(b)(1)(B) .....2, 8, 9, 10 .....11, 12, 13, 14, 15, 16, 19, 21, 22, 23 .....24, 25, 26, 27, 29, 30, 31, 32, 36, 37

National Labor Relations Act, Sec. 13, 29 U.S.C. Sec. 163 .....18, 31

National Labor Relations Act, Sec. 14(a) 37

Textbooks

Comment, 1976 Wis. L. Rev. 866, 897-98 33

93 Congressional Record 3836, 2 Legislative History 1008 33

93 Congressional Record 3837, 1 Legislative History 503 11

Page

93 Congressional Record 3953, 2 Legislative History 1012 11

93 Congressional Record 4266, 2 Legislative History 1077 11

87 Harvard Law Review (1973), pp. 458, 469, n.70 17

1 Legislative History 652 33

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Summers, Legal Limitations on Union Discipline, 64 Harvard Law Review (1951), p. 1049 17

19 Villa Nova Law Review (1974), pp. 519, 530 .. 17

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Respondent Writers Guild of America, West, Inc. Brief.

Statement of the Case.

A. INTRODUCTION.

This matter is before the Court on the petition of the National Labor Relations Board ("Board"), three broadcast networks ("Networks"), and the Association of Motion Picture and Television Producers, Inc. ("Association"), to review a Second Circuit decision favorable to the respondent Writers Guild of America, West, Inc. ("Guild").

The Guild has represented writers at member companies of the Association, the Networks, and others for many years [Bd. Pet. App. 20a[1]] (not merely since 1970, the date the expired collective bargaining agreements [collectively referred to as "the Agreement"] were signed [Bd. Br. at 3-4]).[2] This dispute arose during the course of a strike by the Guild against the employers over the terms of a new collective bargaining agreement [Bd. Pet. App. 20a-21a].

The court below found as a matter of law that the Guild's discipline and the threat to discipline members who were supervisors, for crossing Guild primary picket lines at the members' places of employment, did not constitute a violation of § 8(b)(1)(B) of the National Labor Relations Act, as amended ("Act" or "NLRA"), 29 U.S.C. § 158(b)(1)(B).

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[1]"Bd. Pet. App." refers to the appendix to the Board's petition for a writ of certiorari. The appendix filed with this Court shall be designated "A." "GCX" refers to General Counsel exhibits before the Board.

[2]There were separate agreements for the Association members [GCX 2, A 233-92] and the Networks [GCX 9, A 314-80]; and among Association members for those engaged in theatrical work [A 236], and those in television [A 240]. In respects relevant to the issue presented the agreements were the same.

Among the Board's findings with which the Guild takes issue, is that the supervisors involved performed no rank-and-file duties during the strike; and that they had grievance adjustment functions vis-a-vis the Guild or its members.[3]

B. SOME OF THE SUPERVISORS PERFORMED SOME RANK-AND-FILE WORK DURING THE STRIKE.

Some of the persons involved in this proceeding—story editors (or as they are sometimes called, executive story consultants or executive story editors [Bd. Pet. App. 29a; A 108])—are writers who serve in a supervisory capacity over other writers [Bd. Pet. App. 29a; A 32-33, 49, 108-09; GCX 2, A 251], and who have all their employment terms and conditions governed by the Agreement [GCX 2, A 251]. Other supervisors, called "hyphenates" because they have either in the past performed, or concurrently are performing rank-and-file writing [A 44, 60, 69, 71-72, 212; Bd. Pet. App. 34a] in addition to such supervisorial work as producing (in which case the person would be a "writer-producer") [Bd. Pet. App. 21a-22a], are for the most part governed by the Agreement only when they perform covered writing services.

Both before and during the strike some of these supervisors performed certain non-supervisory writing services. These are known as "(a) through (h)" be-

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[3]While we recognize that it is the function of the courts of appeals in the first instance to make certain there is substantial evidence on the record as a whole to support the Board's conclusions, Universal Camera Corp. v. NLRB, 340 U.S. 474, 491 (1951), the Second Circuit found the Board to be wrong in this case as a matter of law [Bd. Pet. App. 3a-4a], and therefore did not reach the factual inquiries which are presented here.

cause they are contained in subparagraphs (a) through (h) in the Agreement. The (a) through (h) services are described in the Agreement as "writing," but when performed by producers, directors and other discrete persons, they may be done without *ipso facto* subjecting these persons to the obligations, or giving to them the benefits of the Agreement.[4]

The performance of (a) through (h) services is not limited to supervisors, however. For example, "polishing" of a script by a producer is within what the parties understand to be (a) through (h) [A

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[4]Article 1, paragraph B, section 1.a. of the Agreement [A 236-37] provides (with emphasis added):

> A "writer" is a person who is:
>
> (1) Employed by the Company to write literary material as defined herein . . . ;
>
> (2) employed by Company, who performs services (at Company's direction or with its consent) in writing or preparing such literary material or making revisions, modifications, or changes in such literary material regardless of whether such services are described or required in his contract of employment; provided, however that *any writing services described below* performed by Producers, Directors, Story Supervisors (other than as provided in Article 14 hereof), Composers, Lyricists, or other employees, shall not be subject to this Basic Agreement and such services shall not constitute such a person a writer hereunder;
>
> (a) Cutting for time
>
> (b) Bridging material necessitated by cutting for time
>
> (c) Changes in technical or stage directions
>
> (d) Assignment of lines to other existing characters occasioned by cast changes
>
> (e) Changes necessary to obtain continuity acceptance or legal clearance
>
> (f) Casual minor adjustments in dialogue or narration made prior to or during the period of principal photography
>
> (g) Such changes in the course of production as are made necessary by unforeseen contingencies (e.g., the elements, accidents to performers, etc.)
>
> (h) Instructions, directions, or suggestions, whether oral or written, made to writer regarding story or teleplay.

59, 75, 144];[5] and writers who are acknowledged to be employees under the Agreement are often employed to polish either their own, or other writers' scripts [A 103, 111, 169].

The Board found that among the services rendered to their employers by some supervisors during the strike, was (a) through (h) writing [Bd. Pet. App. 57a], including rearranging scenes [A 187-90]; having a secretary (after consultation with the supervisor) make the physical changes in the script [A 189]; or having others make changes in a script [A 205[6]].

The statement that "no hyphenate in fact did any rank-and-file writing during the strike" [Bd. Br. at 7] may be true with respect to writing *other than* (a) through (h); but the Guild was simply not in a position to contest what the supervisors said they did in the studios.

Because of the inaccessibility of the work area, the Guild was required to rely, with insignificant exceptions, upon the supervisors' version of what they did while at work. Of the sixteen who were tried by the Guild for crossing its picket lines and rendering services for

---

[5]A "polish" is a minimal alteration of a script or scene [A 144]. It is performed for the purpose of "honing the material. Trying to make the dialogue better, more satisfactory. Trying to make . . . your effects more dramatic. Trying to meet very specific production problems . . ." [A 168-69].

[6]This same supervisor testified that he had never—not even before the strike—put a pen to paper, and that his writing services were performed, and his story credits and Guild membership obtained by giving oral instructions to another writer, who executed them [A 201-02]. Function (h), see note 4, *supra*, which the Agreement describes as "writing," includes "instructions, directions, or suggestions, *whether oral or written*, made to writer regarding a story or teleplay" (emphasis added).

a struck employer [A 399], eleven supervisors did not attend their internal union trials and so could not be examined about the work they performed [GCX 16C, D, E, G, I, J, K, L, M, N and O], and only four testified before the Board.

C. THE SUPERVISORS HAVE NO GUILD-CONNECTED COLLECTIVE BARGAINING OR GRIEVANCE ADJUSTMENT FUNCTIONS.

There was adequate testimony that at least some of the supervisors engaged in collective bargaining with labor organizations *other than the Guild*, or the adjustment of grievances of persons *other than writers*.

None of the hyphenates is alleged to have engaged in collective bargaining with the Guild. And despite the Board's conclusions to the contrary, this record will not sustain a finding that story editors or producers adjust grievances of writers. All the record shows in this regard is that they hire writers,[7] and tentatively assign writing credit.[8] Disputes which story editors

[7]There is a transcript reference [A 41] to the testimony of a producer that producers handle writers' grievances concerning writing commitments. The cross-examination of the witness shows, however, that the producer was simply being *asked* by his superior whether he had made a commitment to hire the writer in question [A 42], *i.e.*, the producer was called upon as a witness, not as a grievance adjuster.

[8]A producer or story editor makes an initial determination as to which writer shall receive screen credit for a story, and that tentative allocation of credit is submitted to the Guild [A 54]. Any dispute on the matter goes to the Guild's credits committee for resolution [A 55] under the elaborate internal Guild procedure described in the Agreement [GCX 2, A 249-75], which results in a final determination, binding on the employer and the writers [*id.*, A 262]. "[T]he decision, in other words, is the Guild's; no one else's" [A 142-43]. On this record there is no evidence that producers or story editors adjust grievances between their employers and the Guild concerning writing credit, since any credit disputes constitute internal Guild affairs.

purportedly adjusted were over the artistic approach to a writing assignment. For example, when asked about grievances that story editors are called upon to resolve, a witness said they were involved in "ameliorating writers' feelings when things have to be rewritten" [A 109].

There was, on the other hand, sufficient evidence that some hyphenates bargained with, or adjusted grievances of members of *other* labor organizations.

D. IRRELEVANT ISSUES.

Finally, there are a number of factual matters which, while interesting, are irrelevant to this proceeding. The first concerns the attempted resignation from the Guild of one of the hyphenates on the eve of the strike, which was not permitted [A 559-60]. This is irrelevant because it was not a charged violation and the Administrative Law Judge ("ALJ") determined that no finding could be predicated upon that incident [Bd. Pet. App. 64a-65a].[9] It is also irrelevant because the Board has found the same violation in other cases where this was not an issue. The second is the amount and disposition of the fines assessed against the hyphenates. This is irrelevant because it is a matter of state court concern should the Guild seek to collect the fines.[10] (Additionally, the fines and penalties were all "drastically reduced" [Bd. Pet. App. 46a] or eliminated completely during internal Guild appeals, prior to the completion of the hearing before the ALJ; no one was expelled; and no fine exceeded $3,900 [A 544-47].)

[9]Additionally, supervisors' intraunion relationships are not cover by the Act. See Florida Power & Light Co. v. IBEW, Local 641, 417 U.S. 790, 805 n.16 (1974). See also note 40, *infra*.

[10]See NLRB v. Boeing Co., 412 U.S. 67, 74 (1973); Booster Lodge 405, IAM v. NLRB, 413 U.S. 84, 86 (1973).

SUMMARY OF ARGUMENT.

I.

No Supervisor Was Disciplined for the Purpose, or With the Effect of Restraining or Coercing His Employer in the Selection of a Bargaining or Grievance Adjustment Representative.

Section 8(b)(1)(B), adopted in 1947, was designed to outlaw union attempts to restrain or coerce an employer with respect to his collective bargaining or grievance adjustment representatives. More than 20 years after enactment of the section, the Board adopted a theory that § 8(b)(1)(B) prohibits discipline of a supervisor for failing to follow union rules, because such discipline would involve the supervisor in a conflict of loyalties and would thereby restrain and coerce the employer with respect to his selection of a supervisor with § 8(b)(1)(B) functions.[11]

That theory was shown ill-founded by this Court in *Florida Power & Light Co. v. IBEW, Local 641*, 417 U.S. 790 (1974), where discipline by a union of its supervisor-members for crossing a picket line and performing rank-and-file work during a strike, was held not unlawful. The Court put to rest the conflict of loyalties theory advanced by the Board, and concluded that § 8(b)(1)(B) is violated by union discipline only where such discipline can adversely affect the supervisor's conduct *in performing his bargaining or grievance adjustment duties*. The present case contains no showing of any such adverse effect.

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[11]An "8(b)(1)(B) supervisor," or "8(b)(1)(B) functions," refers to collective bargaining and grievance adjustment, the sole supervisory functions which are mentioned in § 8(b)(1)(B).

Here, certain supervisors were disciplined for crossing the Guild's picket lines. The Board's theory was that since the supervisors did not perform rank-and-file services while at work, the discipline would adversely affect their grievance adjustment and collective bargaining duties—a non sequitur. The ALJ advanced an additional theory, that by the Guild's disciplining of the supervisors and securing their absence from work, the employer lost these supervisors' services.

The ALJ's premise is faulty because the disciplined supervisors are precisely the ones who *did* go to work, and with respect to whom their employers continued to enjoy their services during the strike. Moreover, the ALJ's reasoning focuses on the surface result—the supervisor's absence, a result which could come about by the clearly permissible process of appealing to the supervisor to uphold his union principles—rather than the resulting effect upon the performance of his § 8(b)(1)(B) services. It is the latter effect which this Court stated in *Florida Power* is determinative.

The Board, on the other hand, while purporting to apply this Court's ruling in *Florida Power*, has done so in such a fashion as to make it untenable.

The Board's conclusion of illegality was a per se result based simply on the fact that the disciplined members were supervisors who had collective bargaining or grievance adjustment functions, and that they did not perform the same quantity of rank-and-file work during the strike as did the supervisors in *Florida Power*. No rational regard was given to the impact of discipline *in this case* on the performance of the supervisors' § 8(b)(1)(B) duties.

The Guild's object in disciplining its members for crossing the picket line was lawful, as we show below, and there was no evidence or any basis for a logical inference of an adverse effect upon the supervisors' § 8(b)(1)(B) functions.

The only evidence introduced in this case concerning the effect of discipline, was that the supervisors might be affected in their ability to hire new writers, a function unrelated to collective bargaining or grievance adjustment. There is no justification for making the presumption of illegality that the Board has made.

The Board's conclusion also leads to an inequitable result. It permits supervisors to enjoy the benefits of the collective bargaining agreement, without sharing the burdens. And it impermissibly tips the scales in the collective bargaining process, since it gives to the employer something he has a right to secure only at the bargaining table, namely, protection from discipline of supervisors who the employer is not obligated, but nevertheless has permitted to remain members of the union.

II.

Florida Power Need Not Be Reviewed but Needs Only to Be Properly Applied by the Board.

Based upon the anomalous results reached by the Board in this case and others, the Networks would have the Court review *Florida Power* and overrule it. Based upon the same premise, the Guild would have the Board directed to properly apply *Florida Power*, for the result sought by the Networks is not the result intended by Congress. The Networks would simply return to the conflict of loyalties theory, which has no statutory or other basis.

ARGUMENT.

I.

NO SUPERVISOR WAS DISCIPLINED FOR THE PURPOSE, OR WITH THE EFFECT OF RESTRAINING OR COERCING HIS EMPLOYER IN THE SELECTION OF A BARGAINING OR GRIEVANCE ADJUSTMENT REPRESENTATIVE.

A. INTRODUCTION.

Section 8(b)(1)(B) of the Act was adopted in 1947 to protect employers against restraint and coercion with respect to the selection of their representatives for the purpose of collective bargaining and grievance adjustment. *Florida Power & Light Co. v. IBEW, Local 641*, 417 U.S. 790, 803 (1974). The legislative history makes clear Congress' intent, which was limited to blunting union attempts to force employers into industry-wide bargaining, and dictating who the employer's foreman or bargaining representative should be. *Florida Power*, 417 U.S. at 803-04.[12]

For almost 100 volumes of its decisions, from 1947 to 1968, the Board's interpretation of § 8(b)(1)(B) was limited to that which the legislative history indicated it was intended to govern, such as a union's

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[12]Relevant legislative history is found in Senate Report No. 105, 80th Cong., 1st Sess. 21, 1 Legislative History of the Labor Management Relations Act 427 (NLRB 1948) [hereinafter cited as Legislative History]; *id.* at 41, 1 Legislative History 503; 93 Cong. Rec. 3837; 93 Cong. Rec. 4266, 2 Legislative History 1077; 93 Cong. Rec. 3953, 2 Legislative History 1012.

A review of the legislative history is pertinent since each case must be examined in the light of the language of the Act and purpose of the statute. Local 1976, United Bhd. of Carpenters v. NLRB, 357 U.S. 93, 100-01 (1958). Tellingly, none of the petitioners cites any legislative history in support of the Board's present position.

picketing to secure a replacement of an employer's industrial relations consultant; forcing an employer to join or resign from multi-employer bargaining associations; or compelling the selection of particular foremen. (See cases collected in *Florida Power*, 417 U.S. at 798-99.)

But in 1968 the Board charted a new course: it held in *San Francisco-Oakland Mailers' Union 18 (Northwest Pub., Inc.)*, 172 N.L.R.B. 2173 (1968) that a union violated § 8(b)(1)(B) by disciplining a foreman for the manner in which he interpreted the collective bargaining agreement, even though the union had made no effort to secure the supervisor's replacement or otherwise engage in conduct specifically banned by § 8(b)(1)(B). The violation in *Oakland Mailers'* was predicated on the Board's conclusion that the union sought a "substitution of attitudes" on the part of these § 8(b)(1)(B) supervisors, which would require the employer to replace them or face the effective loss of their services as employer representatives. *Oakland Mailers'*, 172 N.L.R.B. at 2173.

From *Oakland Mailers'* the Board's next decisional step was a determination that § 8(b)(1)(B) prohibited the discipline of supervisor-members for the exercise of any management or supervisory function, whether or not related to collective bargaining or grievance adjustment.[13]

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[13]*See* New Mexico Dist. Council of Carpenters (A. S. Horner, Inc.), 177 N.L.R.B. 500 (1969) (supervisor disciplined for working for company that had no agreement with union); New Mexico Dist. Council of Carpenters (A. S. Horner, Inc.), 176 N.L.R.B. 797 (1969) (supervisor disciplined for hiring non-union employees), both NLRB orders enforced by 454 F.2d 1116 (10th Cir. 1972).

Finally, in *Wisconsin Electric Power Co., Illinois Bell Telephone,* and *Florida Power & Light Co.*,[14] the Board found violations where supervisor-members were disciplined not for their exercise of § 8(b)(1)(B) functions, nor even for the exercise of supervisory functions, but merely for working behind the picket line of their own unions. The Board's rationale was that working during a strike is the type of conduct an employer has a right to expect of supervisors, and union discipline to restrain the performance of such work serves to subvert the loyalty to which the employer is entitled. *Wisconsin Electric Power Co.*, 192 N.L.R.B. 77, 78 (1971).

On review of the conflict of loyalty cases, this Court held in *Florida Power* that the Board had strayed from the intent of Congress in enacting § 8(b)(1)(B).[15] The section had not been designed to cope with the conflict of loyalties problem, *Florida Power*, 417 U.S. at 813; rather, the loyalty issue was addressed through the exclusion of supervisors from the protections of the Act, *id.* at 805-13, 811 n.21, thereby

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[14]Local 2150, IBEW (Wisconsin Elec. Power Co.), 192 N.L.R.B. 77 (1971), *enforced*, 486 F.2d 602 (7th Cir. 1973); Illinois Bell Tel., 192 N.L.R.B. 85 (1971), *enforcement denied*, 487 F.2d 1143 (D.C. Cir. 1973), *aff'd sub nom.* Florida Power & Light Co. v. IBEW, Local 641, 417 U.S. 790 (1974); IBEW Sys. Council U-4 (Florida Power & Light Co.), 193 N.L.R.B. 30 (1971) (subsequent history identical to *Illinois Bell Tel., supra*).

[15]The majority concluded that the precisely directed legislative history, see note 12, *supra*, and the narrowly worded statutory language "reflect a clearly focused congressional concern with the protection of employers in the selection of representatives to engage in two particular and explicitly stated activities, namely collective bargaining and the adjustment of grievances." *Florida Power*, 417 U.S. at 803.

presenting employers with self-help options for dealing with this matter. *Id.* at 812-13.

Since § 8(b)(1)(B) was not intended "to extend protection to the employer from union restraint and coercion when engaged in any activity other than the *selection* of its representatives for the purposes of collective bargaining and grievance adjustment," *Florida Power*, 417 U.S. at 804 (emphasis in original), the Court found that

> a union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8(b)(1)(B) *only* when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer.

Id. at 804-05 (emphasis added). (In the two places where the Board's brief gives this same quotation [Bd. Br. at 10, 14] the word "only" is omitted.)

At the very minimum the Board is obligated to ascertain whether the discipline was such as to adversely affect the supervisor in the performance of his § 8(b)(1)(B) duties. We shall show that the Board failed to do that here.

The Board's present view, as initially expressed in *Chicago Typographical Union 16 (Hammond Publishers, Inc.)*, 216 N.L.R.B. 903, 904 (1975) (and adopted in the present case [Bd. Pet. App. 13a n.6]) is that where a supervisor has been disciplined after having engaged only in the performance of supervisory work,

> there is clearly a violation since it is reasonably likely that an adverse effect will carry over to the supervisor's performance of his 8(b)(1)(B) duties.

No evaluation of the facts in *Hammond* (other than to attempt to determine the percentage of rank-and-file work done); no reference to industrial experience; nothing other than the Board's conclusion that this result is dictated by *Florida Power*.

A violation of § 8(b)(1)(B) occurs, according to the Board, except where a supervisor who is disciplined for crossing his union's picket line at his employer's place of business has performed more than a "minimal" amount of rank-and-file work during the strike; and apparently to avoid the necessity of a case-by-case analysis, and without further explanation, the Board concludes that anything less than 45-50% is minimal.[16]

The Board's use of the "minimal" test lacks foundation not only in common parlance,[17] but in its asserted reliance upon *Florida Power* as well. Where this Court said that no violation of § 8(b)(1)(B) may be predicated upon a finding that supervisors were disciplined for performing struck work, the Board has substituted

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[16]"Minimal amount," according to the Board, is less than 45-50%. *See* Detroit Pressmen's Union, Local 13 (Observer Newspapers), 217 N.L.R.B. 576 (1975); Local 1959, United Bhd. of Carpenters (Aurora Modular Indus.), 217 N.L.R.B. 508 (1975); United Bhd. of Carpenters, Local 14 (Max M. Kaplan Properties), 217 N.L.R.B. 202 (1975); Bakery Workers Local 24 (Food Employers Council, Inc.), 216 N.L.R.B. 917 (1975).

In Wisconsin River Valley Dist. Council of Carpenters (Skippy Enterprises), 218 N.L.R.B. 1063 (1975), *aff'd*, 532 F.2d 47 (7th Cir. 1976), a finding of 30% rank-and-file work was held less than minimal, and thus insufficient to avoid a violation.

[17]Webster's New Collegiate Dictionary (1975) defines "minimal" as, "Relating to or being a minimum: constituting the least possible."

the conclusion that it is *only* the performance of struck work of more than a minimal amount which justifies union discipline of such supervisors.

In the present case, following its *Hammond* rationale, since there was found to be no rank-and-file work done by the supervisors (or at least not 50%), there was held to be an *ipso facto* violation. (The Board was incorrect in this finding as we shall show, since the [a] through [h] work was rank-and-file or at least not supervisory.)

B. THE BOARD'S READING OF § 8(b)(1)(B) CONFLICTS WITH THE ACT'S LANGUAGE AND INTENT, AND WITH THIS COURT'S DECISION IN FLORIDA POWER.

1. There Was No Unlawful Object or Effect to the Discipline.

We shall show first that the Board's presumption of illegality based solely upon the lack of evidence that the disciplined supervisors engaged in the performance of 50% or more rank-and-file work during the strike, is unwarranted. Next, that there is neither an evidentiary nor a logical foundation for the inference that supervisors in this case will be adversely affected in the performance of their § 8(b)(1)(B) duties.

a. The Guild's Object in Imposing Discipline Was Lawful and Does Not Warrant an Inference of Illegality.

The only reason for the discipline in this case was to secure Guild members' support of the strike [A 160-61], an object of prime importance during a labor dispute. *See NLRB v. Granite State Joint Board,* 409 U.S. 213, 218 (1972) (Burger, C.J., concurring opinion) ("unions have need for solidarity and at no time

is that need more pressing than under the stress of economic conflict"); *NLRB v. Allis-Chalmers Mfg. Co.,* 388 U.S. 175, 181 (1967):[18]

> Integral to this federal labor policy [of permitting unions to enforce collective action] has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement on its terms, and "[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ."[19]

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[18]By the citation of *Allis-Chalmers* and other cases dealing with statutory "employees," we do not mean to gloss over this Court's admonition that unlike discipline of employees, discipline of supervisors is not expressly permitted (or prohibited) by the Act. *Florida Power,* 417 U.S. at 805 n.16. We intend only to show that securing support of a strike is lawful, and does not warrant the presumption of illegality which the Board makes without further analysis.

[19]*See also* Summers, Legal Limitations on Union Discipline, 64 Harv. L. Rev. 1049, 1066 (1951) ("The union may punish not only those who do the work of men who are on strike, but also those who give the employer any other aid during the strike"); Note, 87 Harv. L. Rev. 458, 469 n.70 (1973):

> Discipline of strikebreaking supervisors who perform supervisory work . . . vindicates an important union interest—the preservation of the strike as an effective economic weapon. Given the clear and direct impact of discipline for strikebreaking upon the union's interest, and the more speculative and indirect impact of such discipline upon the employer's representation, the interest balancing analysis would appear to suggest that such discipline be found lawful.

8 Suffolk U.L. Rev. 728, 758-59 (1974); Note, 19 Vill. L. Rev. 519, 530 (1974).

The deference shown to preservation of the right to strike as a legitimate tool with which there should be no tampering rests on the conclusion that a lawful strike "is an economic weapon which in great measure implements and supports the principles of the collective bargaining system." *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 234 (1963); *NLRB v. Insurance Agents' Union*, 361 U.S. 477, 495 (1960). *Cf. Local 76, IAM v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 147 (1976).

"Congress has been rather specific when it has come to outlaw particular economic weapons on the part of unions." *NLRB v. Insurance Agents' Union*, 361 U.S. 477, 498 (1960); *see NLRA* § 13; *NLRB v. Drivers Local 639 (Curtis Bros.)*, 362 U.S. 274, 281 (1960) ("§ 13 . . . provides, in substance, that the Taft-Hartley Act shall not be taken as restricting . . . the right to strike . . . unless 'specifically provided for' in the Act itself"); therefore, it is basic that any restriction on a union's economic weapons must be express and not merely implied.

The removal of a union's disciplinary powers over its members—whether supervisors or not—cannot be left to implication as to the Congressional intent, because of the importance of those powers in the collective bargaining process. Limiting the right to discipline members for crossing their organization's picket line during a strike is a direct impingement upon a union's economic weapons, and as such would require an act of Congress. There is no statute which in so many

words imposes that limitation. Nor does the legislative history of the NLRA justified such a limitation.[20] On the contrary, that history confirms that the intent of § 8(b)(1)(B) is as narrow as its words. *Florida Power*, 417 U.S. at 803, 804.

The result of the Board's decision in this case is to diminish the Guild's economic weapons. That result can be justified, if at all, only by the clearest evidence that the conduct in which the Guild engaged was proscribed by the Act. In fact, however, the Board seeks justification by making an unfounded inference: the inference is that disciplined supervisor-members who perform rank-and-file struck work less than 50% of the time during a strike will be less faithful to their employers when adjusting grievances.

The legality of the Guild's strike (which is uncontested) and the permissibility of union discipline in general, serves to distinguish this case from *Radio Officers' Union v. NLRB*, 347 U.S. 17 (1954), cited by the Association for the proposition that the Board's infer-

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[20]In a case arising under § 8(b)(1)(A), which in common with subsection (B) uses the phrase "restrain and coerce" to define the outlawed conduct, this Court has said:

> When the literal application of the imprecise words "restrain or coerce" Congress employed in § 8(b)(1)(A) produces the extraordinary results we have mentioned [interfering with the right of a union to fine its members for crossing a picket line] we should determine whether this meaning is confirmed in the legislative history of the section.

NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 184 (1967).

The legislative history showing a lack of any Congressional intent to secure the result arrived at here by the Board is detailed in note 12, *supra*. No citation to the genesis of the statute is found in the Board's brief for the propositions which it urges.

ence of unlawful conduct on the part of the Guild must be sustained. In *Radio Officers'* the respondents had engaged in discriminatory conduct, *id.*, 347 U.S. at 24-25, 28-31, 34, which was held to have the foreseeable consequence of encouraging union membership and thereby violating § 8(a)(3) of the Act, 29 U.S.C. § 158(a)(3). *Id.*, 347 U.S. at 44-45.

But as in *Local 60, United Brotherhood of Carpenters v. NLRB*, 365 U.S. 651 (1961), the present case "is . . . different from Radio Officers . . . where, discrimination having been shown, the inferences to be drawn" could be "left largely to the Board." *Id.* at 654-55.

This Court has repeatedly stricken Board presumptions or inferences which lacked a basis in fact. In *Local 357, International Brotherhood of Teamsters v. NLRB*, 365 U.S. 667 (1961), the Board concluded that a hiring hall arrangement which failed to contain certain Board-mandated provisions, inherently served to encourage union membership and was, therefore, illegal. *Id.* at 671-72. But in the absence of evidence that the arrangement was in fact used unlawfully the Court was unwilling to accept the Board's assumption that a union conducts its operations in violation of law. *Id.* at 676. *Accord, NLRB v. News Syndicate Co.*, 365 U.S. 695, 699-700 (1961); *NLRB v. Insurance Agents' Union*, 361 U.S. 477, 481-82 ns.4 and 5 (1960).

Here, there was no discriminatory or inherently unlawful conduct involved in the discipline. Indeed, when applied to statutory employees, discipline for crossing their union's picket line is *protected* activity. The bare incidence of discipline is at most a neutral factor in analyzing what effect it will have upon the supervisor's future performance of his § 8(b)(1)(B) duties. *Florida Power* requires at a minimum some evidence and analysis to demonstrate that the discipline under review may adversely affect the supervisor's conduct.[21]

The relevance, therefore, of evidence concerning the conduct for which the supervisor was disciplined, is to ground a conclusion or an inference as to the effect of such discipline upon the supervisor's ability to carry out his future § 8(b)(1)(B) duties.

b. The Board's Inference of Illegality Lacks an Evidentiary or Logical Basis.

i. *There was no evidentiary basis for the inference.*

The conclusion that the present discipline of supervisors for crossing a picket line will result in a future diminished capacity by these supervisors to vigorously joust on their employers' behalf with the Guild in the adjustment of grievances, leapfrogs the requirement of an evidentiary or experiential basis. "Obviously . . . an inference cannot stand if it is not drawn from substantial evidence on the record considered as a whole."[22] This Court has said that the Board

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[21]The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8(b)(1)(B) *only* when that discipline may *adversely affect* the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer. *Florida Power*, 417 U.S. at 804-05 (emphasis added).

[22]NLRB v. Barberton Plastic Prods., 354 F.2d 66, 71 (6th Cir. 1965). *Accord*, Northern Petrochem. Co. v. NLRB, 469 F.2d 352, 355 (8th Cir. 1972); NLRB v. Howell Automatic Mach. Co., 454 F.2d 1077, 1083 (6th Cir. 1972) ("when the inferences . . . are not supported by substantial evidence . . . this Court has the duty not to accept such inferences"); NLRB v. Century Broadcasting Co., 419 F.2d 771, 779 (8th Cir. 1969); NLRB v. Englander Co., 260 F.2d 67, 77 (9th Cir. 1959).

may draw reasonable conclusions only "'within the limits of the inquiry from the proven facts. . . .'" *Radio Officers' Union v. NLRB*, 347 U.S. 17, 49 (1954).[22]

While the Board is free of court restraint to draw one rather than another inference from facts in the record, there must nonetheless be some basis for the inference it draws.

There was no evidence of an intent on the Guild's part to affect the employers' selection of § 8(b)(1)(B) representatives, nor was there any testimony of such an effect. In fact, there were some supervisors who testified that they adjusted grievances (of non-writers) during the strike, despite the threats of discipline [Bd. Pet. App. 44a n.16], yet the General Counsel put on no evidence concerning an adverse effect of the threats upon these supervisors. The only testimony in this regard was that if after the strike the Guild members would not work with the picket line-crossing supervisors, it would adversely affect the supervisors' ability to hire top writers [A 50-51]. While the hiring of employees is a supervisory function within § 2(11) of the Act, 29 U.S.C. § 152(11), it is not one of

[22]*See* Universal Camera Corp. v. NLRB, 340 U.S. 474, 490 (1951):

> [T]he Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions . . . . The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by . . . its informed judgment on matters within its special competence . . . .

the specific functions mentioned in § 8(b)(1)(B) for which employers have protection; and such an effect does not result in a violation of § 8(b)(1)(B).[24]

The reason for the lack of evidence here is that the case was tried prior to this Court's decision in *Florida Power*, at a time when the Board considered any discipline of a supervisor for crossing a picket line to be unlawful. It did not even require of the General Counsel that he establish collective bargaining or grievance adjustment functions on the part of the supervisor. *See NLRB v. Rochester Musicians Ass'n Local 66*, 514 F.2d 988, 992 (2d Cir. 1975). The Board now seeks to remedy the absence of evidence by making a presumption of illegality based solely upon the percentage of rank-and-file work performed.

Even if there were any validity to the Board's present view, the available evidence in this case is that at least some of the supervisors performed rank-and-file services of the (a) through (h) type.[25] These services are not supervisory within the meaning of § 2(11)

[24]"Both the language and the legislative history of § 8(b)(1)(B) reflect a clearly focused congressional concern with the protection of employers in the selection of representatives *to engage in two particular and explicitly stated activities*, namely collective bargaining and the adjustment of grievances." *Florida Power*, 417 U.S. at 803 (emphasis added); *see* NLRB v. Rochester Musicians Ass'n, Local 66, 514 F.2d 988, 992 (2d Cir. 1975). The distinction between §2(11) and §8(b)(1)(B) functions was made clear in *Florida Power*, *id.* at 811 n.21.

[25]See note 6, *supra*, and preceding text. This evidence was only what the supervisors *admitted* doing. Board Member Fanning, in *Chicago Typographical Union 16 (Hammond Publishers, Inc.)*, 216 N.L.R.B. 903, 907 n. 21 1975), cogently asked, "How, during a work stoppage, is the Union

(This footnote is continued on next page)

of the Act; and even more clearly, they are not § 8(b)(1)(B)-type services. Indeed, they are exactly the type of writing services rendered on a daily basis by rank-and-file writers, and the Board's conclusion that the work undergoes a metamorphosis and becomes supervisory work when performed by supervisors [Bd. Pet. App. 35a] is without statutory support and contrary to the result reached in other Board cases.[26]

So far as the evidence is concerned, therefore, at least some of the disciplined supervisors performed rank-and-file work, albeit in an amount that cannot be determined from this record. The facts here will not support the weighing process (rank-and-file versus supervisory work) the Board has substituted for the reasoning and evidentiary requirements of *Florida Power*.

ii. *There is no logical basis for the Board's inference.*

Lacking an evidentiary foundation, the Board's carry-over conclusion could still stand if it represented recognition of a fact of common experience. *See Radio Officers' Union v. NLRB*, 347 U.S. 17, 46 (1954). The carry-over effect inference, however, does not meet

supposed to determine whether struck work is actually being performed, let alone gauge the percentage of struck work?" The fact that one supervisor was willing to present a copy of the script which he was producing to show that no writing had been done [Bd. Pet. App. 43a n.14] says nothing about the writing he may have done on other scripts, or about the writing of other hyphenates, especially when of the sixteen trials, the hyphenate failed to personally show up in twelve, and sent a surrogate witness and a lawyer, instead.

[26]In the cases cited in note 16, *supra*, the rank-and-file work the supervisors were found to have performed during the strike was the same type, and often in the same quantity, as that which they performed prior to the strike. The fact that the unions in those cases permitted supervisors to perform such work, did not result in a finding, as it does here, that the work has been transformed into supervisory duties.

this test either, and furthermore, leads to an absurd result.

The absurdity is apparent from the fact that it applies to all supervisors, whether they adjust Guild members' grievances or not. For example, there was no evidence or finding of grievance adjustment or collective bargaining functions on the part of directors or certain executives, vis-a-vis the Guild or writers.[27] Yet the Board infers that they too will have a diminished capacity to effectively represent their employers in adjusting grievances as a result of Guild discipline. And the same inference is made with respect to those who crossed the picket line to perform (a) through (h) work, which is not even supervisory, let alone 8(b)(1)(B).

Whether there will be a carry-over effect depends upon how the supervisor foresees his future relationship with the disciplining union and how he in fact will react when again confronting that organization in grievance adjustment or bargaining.[28] To the extent that a particular supervisor does not and will not deal with the Guild on § 8(b)(1)(B) matters, it is illogical to infer that he will be affected in his § 8(b)(1)(B) duties.

[27]Unlike producers, who were found (in our view without evidentiary support, see notes 7 and 8 and surrounding text, *supra*) to adjust writers' grievances [Bd. Pet. App. 27a], the ALJ found directors to be in charge of the principal photography of films, and as such, they were § 8(b)(1)(B) supervisors over the crew and actors [Bd. Pet. App. 28a]. There was no evidence of grievance adjustment or collective bargaining with writers.

[28]There is no contention—nor was there any evidence—that any of the supervisors engaged in bargaining with the Guild; only that some had grievance adjustment functions with Guild members (but not with the Guild), and with members of other labor organizations.

The citation by the Association of *International Organization of Masters, Mates & Pilots v. NLRB*, 539 F.2d 554 (5th Cir. 1976) and *International Organization of Masters, Mates & Pilots v. NLRB*, 486 F.2d 1271 (D.C. Cir. 1973) for the proposition that the supervisors need not be adjusting grievances of members of the union to which they belong in order to make out a violation of § 8(b)(1)(B) is inapposite and in fact highlights the point being made here. Those cases involved direct restraint and coercion of the employer, through picketing, to attempt to have a supervisor replaced, conduct which constitutes a classic violation of the Act and comes within its express terms and the legislative intent. *See Florida Power*, 417 U.S. at 798-99.

The significance in this case of the lack of any dealings with the Guild by certain of the supervisors, is in the fact that the Board is attempting to show not direct coercion of the employer, as in the picketing situation, but indirect coercion, through a diminution in the supervisor's effectiveness as a grievance adjuster in future dealings with the disciplining union. But where there are no such dealings—at least none with the disciplining union—any possible carry-over effect is attenuated to zero.

Although the Board found that producers and story editors adjusted writers' grievances, a conclusion which the Guild disputes,[29] even as to them the so-called grievance adjusting functions were so minimal as to require at least *some* rationale as to why there would be a carry-over effect. Instead, there was simply a citation to *Hammond*, which in turn relies only upon the amount of rank-and-file work done.

[29]See notes 7 and 8 and surrounding text, *supra*.

The answer to the question of whether discipline of a supervisor may adversely affect his future performance of § 8(b)(1)(B) functions for his employer, depends upon the reason for the discipline, or at least, upon what the supervisor could reasonably believe to be the basis for the discipline. Certain discipline of supervisors is recognized by the Board and the courts to be lawful, such as discipline for failing to comply with union registration rules,[30] or discipline imposed for performing rank-and-file work during a strike (as in *Florida Power*). In these cases the inference is that the discipline will not inhibit the supervisor's handling of his § 8(b)(1)(B) duties. What then of the supervisor who is fined for crossing his union's picket line; what inference can be drawn as to how, if at all, it will affect his § 8(b)(1)(B) functions? We submit that he will believe he is being disciplined for violating his union's strike rules, and not for any other reason or purpose.

Board Member (now chairman) Fanning, dissenting in *New York Typographical Union 6 (Triangle Publications, Inc.)*, 216 N.L.R.B. 896, 897 (1975) (one of the cases upon which the Board majority relied here in support of its decision [Bd. Pet. App. 13a n.6]), answered the question of what effect discipline for crossing a picket line would have this way:

> [I]n a strike situation what the supervisor does behind the picket line is, in the ordinary case . . . completely irrelevant. The union's interest is quite simply to preserve strike solidarity. . . . It is

[30]Local 453, Bhd. of Painters (Syd Gough & Sons), 183 N.L.R.B. 187 (1970); *see* Meat Cutters Union Local 81 v. NLRB (Safeway Stores), 458 F.2d 794, 798 n.12 (D.C. Cir. 1972).

> . . . specious to argue . . . that whatever the union's interest, it is reasonable to conclude that the supervisor will be affected in the future performance of his grievance adjustment or collective-bargaining duties. Can it seriously be argued that a supervisor who is disciplined for working during a lawful strike will relate that discipline to the manner in which he performed the particular function he was engaged in at the time the discipline was levied? Is not the only reasonable conclusion the supervisor can draw the conclusion that he has been disciplined simply for working at all? In the future, when the supervisor represents the employer at the bargaining table, is it reasonable for the supervisor to fear subsequent discipline if he faithfully represents management's viewpoint because of his prior discipline for working during a strike? *Id.* at 899.

Though it is reasonable to suppose that a supervisor who has been disciplined for the way in which he adjusts a grievance will be concerned about how he adjusts grievances in the future, when he is disciplined for crossing a picket line, "[t]he reasonable conclusion for the supervisor to draw is that if, once again in the future, he crosses a lawful picket line, he will, once again, be disciplined." *Triangle Publications*, 216 N.L.R.B. at 901.

Writing for the Court of Appeal majority in *Florida Power* prior to its affirmance by this Court, Judge Wright's common sense conclusion on the effect of disciplining a supervisor for crossing a picket line was that such "[d]iscipline, or the threat thereof, may well force a supervisor to observe a picket line, but it is questionable whether it will turn him into a believer in the union's cause." *IBEW v. NLRB* (*Florida Power & Light Co.*), 487 F.2d 1143, 1156 (D.C. Cir. 1973). The reason for that conclusion was that "[o]ur everyday experience tells us that the result of discipline is normally some degree of hostility toward the person or group imposing the discipline . . . ." *Ibid.*

Contrary to common sense, and with no evidentiary support, the Board has concluded that discipline for a reason unrelated to the supervisors' § 8(b)(1)(B) functions will have an adverse carry-over effect upon the performance of such functions. The Board has simply referred to its decisions in other cases, which are like "a litany, reciting conclusions by rote without factual explication." *NLRB v. American Cable System, Inc.*, 427 F.2d 446, 449 (5th Cir. 1970). Or in Board Member Fanning's words in *Triangle Publications, Inc.*, 216 N.L.R.B. 896, 900 (1975), "[t]he majority says it [discipline] will [have an adverse effect] because (a) the Board said so in *Hammond Publishers* and (b) the Board says so now."

By concluding that a supervisor will be adversely affected in the performance of his § 8(b)(1)(B) functions if the Guild disciplines him for crossing a lawful picket line, the Board has simply resurrected the conflict of loyalties theory, which in *Florida Power* was shown wrong.

2. The Supervisors' Failure to Show Up for Work, Whether as a Result of Discipline or Otherwise, Does Not Violate § 8(b)(1)(B).

The Board's brief and the ALJ make an additional argument not specifically relied upon by the Board and one which under cases such as *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 169 (1962); *SEC v. Chenery*, 332 U.S. 194, 196 (1947) should not be considered by the Court. In any event, the theory lacks merit and comes down to this: by disciplining supervisors and thus securing their absence from work, the Guild "coerced and restrained their employers in the selection of those specific producers and directors for the purpose of collective bargaining and the adjustment of grievances" [Bd. Pet. App. 64a].

This theory leads to an anomalous result on a number of grounds. First, it focuses upon those who did not show up for work, thereby resulting in the loss to their employers of a § 8(b)(1)(B) representative. But those who stayed away from their jobs were not the supervisors who were disciplined in this case, and there was no evidence that those who stayed away did so out of fear of discipline rather than because of appeals to their union consciousness.[31] It was the supervisors who *did* show up for work and with respect

[31] *Cf.* Honolulu Star-Bulletin, Ltd. v. NLRB, 270 F.2d 567, 570 (D.C. Cir. 1959). In Local 60, United Bhd. of Carpenters v. NLRB, 365 U.S. 651, 654 (1961), this Court admonished the Board that it could not order the reimbursement of dues to all employees who were found to be working under an illegal union security arrangement, because, although

> [o]n the record before us they [the employer and the union] have engaged in prohibited activity . . . [,] there is no evidence that any of them coerced a single employee to join the union ranks or to remain as members. All of the employees affected by the present order were union members when employed on the job in question. So far as we know they may have been members for years on end.

In the present case, while there is evidence of discipline and threats of discipline, there is no evidence as to the reasons those who did *not* cross the picket line honored it.

to whom the employer in fact was *not* deprived of his representatives on this occasion, who were disciplined. Although the employers were clearly not restrained or coerced when they in fact had the services of these supervisors, the supervisors themselves may have been restrained or coerced. Supervisors, however, are not the object of § 8(b)(1)(B)'s protection, and indeed, supervisors have no protection whatsoever under the Act.[32]

Second, this theory proves too much. By looking at the absence of the supervisor, clearly protected activity will be ensnared, such as appealing to him to stay away from work,[33] as well as activity which causes that result through restraint and coercion upon the supervisor. In either case the result so far as the

[32] Not since 1947, when Congress amended the definition of "employee" in § 2(3) of the Act, 29 U.S.C. § 152(3) to exclude supervisors, have supervisors been entitled to the benefits of this law in terms of protection from either their employers or unions. *Florida Power*, 417 U.S. at 807-09; Beasley v. Food Fair, 416 U.S. 653, 656 (1974). See also note 34, *infra*.

[33] Unions may appeal to employees, suppliers, and others who deal with a struck employer, to urge them to cease working for, or otherwise doing business with the employer during the course of a lawful primary strike. *See* NLRA § 13, 29 U.S.C. § 163; United Steelworkers v. NLRB (Carrier Corp.), 376 U.S. 492, 499 (1964); Local 761, Int'l Union of Electrical Workers v. NLRB (General Elec.), 366 U.S. 667, 672 (1961); NLRB v. International Rice Milling Co., 341 U.S. 665, 672-73 (1951). The "restrain or coerce" language of § 8(b)(1) is common to both subsections (A) and (B). Speaking in a case dealing with subsection (A), in which the question was whether picketing for recognitional purposes constituted a violation of that language, the Court in NLRB v. Drivers

(This footnote is continued on next page)

employer is concerned is the same: he has lost the services of his bargainer or grievance adjuster.

Moreover, this theory too fails to engage in the analysis directed by *Florida Power*, namely, to determine the indirect effect upon the employer of the supervisor's future ability (or inability) to perform his § 8(b)(1)(B) duties.

3. The Board's Decision Results in an Unwarranted Interference With the Bargaining Process, and an Inequitable Treatment of Supervisors.

For § 8(b)((1)(B) purposes, Member Fanning suggests that "the 'loyalty' an employer may demand from any supervisor is, *during a strike*, no greater than the loyalty that may be demanded by his union." *Triangle Publications*, 216 N.L.R.B. at 900 (emphasis in original); *see Florida Power*, 417 U.S. 812 n.22. This view is supported by the language and legislative history of the Act.

The legislative scheme has been to permit employers to secure their supervisors' loyalty through requiring the supervisors, on pain of discharge, to sever their membership and fraternal relations with unions. *Florida Power*, 417 U.S. at 807-08.[34]

Local 639 (Curtis Bros.), 362 U.S. 274, 282 (1960) said: "§ 13 is a command of Congress to the courts to resolve doubts and ambiguities in favor of an interpretation of § 8(b)(1)(A) which safeguards the right to strike as understood prior to the passage of the Taft-Hartley Act."

[34]The legislative history indicates that by excluding supervisors from the Act's coverage, Congress left them free to form or join unions; however, the employer can assure his supervisors' freedom from union rules and regulations by in effect requiring them to be non-union:

> The bill provides that foremen shall not be considered employees under the National Labor Relations Act. They may form unions if they please, or join unions, but they do not have the protection of the National Labor Relations Act. *They are subject to discharge for union activity*, and they are generally restored to the basis which they enjoyed before the passage of the Wagner Act.

93 Cong. Rec. 3836, 2 Legislative History 1008 (emphasis added); *see also* H. Min. Rep. No. 245, 80th Cong., 1st Sess. 7, 1 Legislative History 362 (recognizing that if supervisors are to be left unprotected under the Act, the employer will have "unlimited right to discharge them for union activities . . ."); 1 Legislative History 652 (remarks of Rep. Klein).

"Congress' solution" to the problem of divided loyalty, "was essentially one of providing the employer with options." *Florida Power*, 417 U.S. at 812. Where the employer permits supervisors to retain their union connections, he does so with recognition that the union will thereby have increased economic strength in the event of a strike. If he nonetheless considers membership to be advantageous—as the employers here did, because *membership in the Guild was found to be a significant benefit to the employer* [Bd. Pet. App. 62a][35]—he may protect the supervisor from intra-union discipline through the collective bargaining process.[36] Conversely, either as an inducement to the union to permit the supervisors to remain in the organization, or for any other reason, the employer may agree to give up such protection, as was done here.[37]

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[35]The Board found that membership in the Guild provided the hyphenates with "significant contacts with writer-members of Respondent, a sense of pride in belonging to the organization, and, perhaps most important, providing the hyphenate with a wider range of capabilities and thus enhancing his usefulness to his employer" [Bd. Pet. App. 62a].

[36]*See, e.g., Florida Power*, 417 U.S. at 796 (collective bargaining agreement clause protects supervisors); NLRB v. News Syndicate Co., 365 U.S. 695, 696 (1961) (*ibid.*); Comment, 1976 Wis. L. Rev. 866, 897-98.

[37]Article 6, the Guild (Union) Shop provision of the expired Agreement, provided in section 7 [A 245 (emphasis added)]:

(This footnote is continued on next page)

Another option is for the employer to indemnify the supervisor for any fine imposed, or to provide legal counsel in any union disciplinary proceeding (both options having been exercised in this case [A 481, 482]).

What the Act provides to the employer, in other words, is freedom to deal with the problem through self-help, collective bargaining, or both, and that is sufficient protection.[38] This Court has cautioned the Board to remain aloof from the collective bargaining process and to permit the parties to work out their own agreements. *NLRB v. Insurance Agents' Union*, 361 U.S. 477, 490 (1960); *see H. K. Porter Co. v. NLRB*, 397 U.S. 99, 108 (1970). It is not for the Board to grant to one of the parties that which it was unable to secure at the bargaining table, for the Act "does [not] contain a charter for the National Labor Relations Board to act at large in equalizing disparities of bargaining power between employer and union." *Insurance Agents', supra*, 361 U.S. at 490. That the employers would find it economically or otherwise difficult through the collective bargaining process to protect the supervisors [Networks Br. at 46-47] is irrelevant. In *Lodge 76, IAM v. Wisconsin Employ-*

The Guild represents and warrants that *discipline*, resignation, admission, reinstatement, readmission, and all other matters relating to membership status *will at all times during the term hereof be within the exclusive jurisdiction of the Guild;* and the Guild agrees that it will exercise such jurisdiction subject to and in accordance with the provisions and intent of this Article 6 and of any other applicable provisions of this Basic Agreement.

[38]*Cf.* Scofield v. NLRB, 394 U.S. 423, 433 (1969): "We discern no basis in the statutory policy encouraging collective bargaining for giving the employer a better bargain than he has been able to strike at the bargaining table."

ment Relations Comm'n, 427 U.S. 132, 149 (1976) this Court stated that "the economic weakness of the affected party cannot justify state aid contrary to federal law," for the use of economic weapons is part and parcel of the process of collective bargaining.

Finally, in terms of the equity of the situation, certain of the supervisors—story editors—have their terms and conditions of employment covered by the Agreement negotiated by the Guild.[39] Moreover, there is frequent interchange among classifications, so that a Guild member may be producing a show that he has written, and be performing concurrent writing services [A 60, 69, 71-72; Networks Br. at 4-5]. A supervisor today is a writer tomorrow, or even at the same time.

In *Florida Power* the Court dealt with supervisors' obligations in a strike situation. 417 U.S. at 812 n.22:

> [T]he fact that the supervisor will in some measure be the beneficiary of any advantages secured by the union through the strike makes it inherently inequitable that he be allowed to function as a strikebreaker without incurring union sanctions.

The Board has completely ignored this in all subsequent decisions.

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[39]Story editors, albeit supervisors, are members of the bargaining unit represented by the Guild and have their job descriptions and compensation regulated by the Agreement [GCX 2, A 251; GCX 9, A 338-39]. In addition to story editors, employers who use hyphenates to perform extensive writing must provide the hyphenates with a separate contract covering their writing services [GCX 2, A 250; A 35-36], for which they are guaranteed not less than the applicable Guild minimum, without offsets [*ibid.*]. Of those hyphenates questioned on the matter, each had a personal service contract under which the employer could require them to perform covered writing work [A 103, 110-11, 133, 195-96, 218-19, 224].

The evidence showed that Guild membership is retained by some supervisors because of the desire to write in the future [A 81], and because they perform writing functions in connection with their current employment [A 148].[40] Membership is not only of monetary and moral benefit to the writer, *qua* writer, but as the Board acknowledges, it is of benefit to the employer, and thus is an association which makes the person a more esteemed supervisor.

The issue of whether union members who are supervisors may be disciplined for crossing a picket line, by logic and by the legislative history of § 8(b)(1)(B) must be answered in the affirmative. The equities of the situation too, demand that supervisors not be immune from discipline for strikebreaking.

II.

FLORIDA POWER NEED NOT BE REVIEWED, BUT NEEDS ONLY TO BE PROPERLY APPLIED BY THE BOARD.

The Networks would have this Court review its decision in *Florida Power*, on the ground that the distinctions between supervisors and non-supervisors may have become blurred. They cite and quote legislative history for the proposition that Congress intended the distinction between the two to be sharp [Networks

[40]The fact that resignation from the Guild during the pendency of collective bargaining negotiations is disallowed [A 579], simply makes the Guild's rules in this respect analogous to the Board's. Employers and unions may not withdraw from multi-party bargaining once negotiations have commenced. Retail Associates, Inc., 120 N.L.R.B. 388 (1958). And refusal to execute a collective bargaining agreement after a purported untimely withdrawal, is an unfair labor practice. NLRB v. Sheridan Creations, Inc., 357 F.2d 245, 247-48 (2d Cir. 1966), *cert. denied*, 385 U.S. 1005 (1967).

Br. at 39-40]; but the Networks make this argument by themselves blurring the line between the Congressional debate in 1947 over the amendments to §§ 2(3), 2(11) and 14(a) of the Act, which dealt with supervisors, and the debate on § 8(b)(1)(B), dealing with representatives for the purpose of collective bargaining and grievance adjustment [*id.* at 41].

The Networks contend that there was a legislative scheme dealing with §§ 2(3), 2(11), 14(a) and 8(b)(1)(B), which is best effectuated by preventing unions from taking any action that might interfere with the supervisors' loyalty to the employer.

This argument presupposes that the four sections were amended or adopted as a result of a unitary scheme [Networks Br. at 41], which they were not. *Florida Power*, 417 U.S. at 805-13. The argument also presupposes that supervisors themselves are entitled under the Act to protection from discipline, regardless of the effect or lack of effect upon their employers, again an argument which does not comport with the facts.[41]

That the Board has keyed in on the type of work being performed by the supervisor, and whether such work was more or less than minimally rank-and-file, only shows that the Board's reading of *Florida Power* is too narrow and mechanistic, not that *Florida Power* is wrong [Networks Br. at 44-45].

The Networks also argue that "because they may return to writer . . . status at some point in the future, the Networks . . . could not protect their § 8(b)(1)(B) rights by refusing to hire supervisors who were union members" [Networks Br. at 46-47].

[41]See note 32, *supra*.

This industry is such that there is constant change of status, so that the the individual writer or hyphenate is periodically covered and then not covered by the Agreement. The Networks would have the happenstance of the supervisor's status on the day of, or during the strike, determine whether he may be disciplined.[42] The fact is that he may truly be during the year primarily a writer and a beneficiary of the Agreement which, by the strike that he is breaking, the Guild is attempting to improve.[43] More importantly, the economic difficulties encountered is one of the costs of free collective bargaining. *See Lodge 76, IAM v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 149 (1976).

For these reasons this argument by the Networks lacks foundation in the Act or the Congressional intent.

Conclusion.

The Board was wrong in the cases preceding this Court's decision in *Florida Power*. Rather than accept that decision, the Board has sought to avoid it by construing it as narrowly as possible. But just the opposite should be the case: where a restriction is sought to be imposed on picketing or economic action, *that restriction* should be construed as narrowly as possible with a view to preserving this necessary adjunct to collective bargaining.

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[42]During the course of the strike one writer-producer who had been honoring the Guild's picket line was promoted to an executive position, and he thereafter crossed the line [A 205-06].

[43]In any event, even when working under the Agreement there is no legal requirement for a supervisor to be a Guild member (and thus subject to its discipline), as opposed to merely tendering dues and fees. *See* NLRB v. General Motors Corp., 373 U.S. 734, 742 (1963).

The conclusion that the Guild restrained or coerced the charging parties in their selection of representatives for purposes of collective bargaining lacks merit, and the decision of the Court of Appeals should be affirmed. To avoid duplication, we have divided the argument with amicus curiae AFL-CIO. Amicus' brief shall trace the Board decisions since *Florida Power*, to show how in those cases, as well as in this case, the Board has failed to follow this Court's statutory analysis.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1977

AMERICAN BROADCASTING COMPANIES, INC., ET AL., PETITIONERS

v.

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC., PETITIONER

v.

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WRITERS GUILD OF AMERICA, WEST, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

CITATIONS

Cases:

	Page
Bakery and Confectionery Workers, Local Unions 24 and 119 (Food Employers Council, Inc.), 216 NLRB 917	4, 5
Chicago Typographical Union No. 16 (Hammond Publishers, Inc.), 216 NLRB 903, enforced, 539 F. 2d 242, petition for certiorari pending, No. 76–688	4, 5
Glaziers and Glassworkers Local Union No. 1621 (Glass Management Association), 221 NLRB 509	6
Local 322, Laborers Int'l Union (Kingsley Drilling), 229 NLRB No. 139	6
Local 357, Teamsters v. National Labor Relations Board, 365 U.S. 667	8
National Labor Relations Board v. *Insurance Agents*, 361 U.S. 477	9
National Labor Relations Board v. *News Syndicate Co.*, 365 U.S. 695	8
National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. 2d 862	7
New York Typographical Union No. 6 (Triangle Publications, Inc.), 216 NLRB 896	4, 5
Radio Officers' Union v. *National Labor Relations Board*, 347 U.S. 17	9
Steelworkers v. *National Labor Relations Board*, 376 U.S. 492	8

230-247—77——1

Cases—continued

	Page
Warehouse Union Local 6 (Associated Food Stores, Inc.), 220 NLRB 809	6
Wisconsin River Valley District Council (Skippy Enterprises, Inc.), 218 NLRB 1063, enforced, 532 F. 2d 47	6

Statutes:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*):	
Section 8(b)(1)()B), 29 U.S.C. 158 (b)(1)(B)	3, 4, 5, 7, 8, 9
Section 8(b)(2)), 29 U.S.C. 158(b)(2)	9

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1. Contrary to the Union's contention (Un. Br. 3–5, 23–24), the fact that some of the hyphenates per-

formed "(A) to (H)" writing functions during the strike does not undermine the Board's finding that they performed no "rank-and-file" writing work during the strike. The (A) to (H) functions were expressly excluded from the contractual definition of bargaining unit work. The collective bargaining agreement provides that the performance of (A) to (H) functions "by Producers, Directors, Story Supervisors * * * shall not be subject to this Basic Agreement and such services shall not constitute such a person a writer hereunder" (Pet. App. 33a; A. 237, 318, 322). Indeed, the Union did not consider the (A) to (H) functions as bargaining unit or struck work when it disciplined the hyphenates. Although certain strike rules explicitly prohibited writing for struck employers (Pet. App. 36a), the Union did not charge the hyphenates with violating these rules, but only with violating the general rule prohibiting members from crossing picket lines (Pet. App. 44a–45a, 59a).

Furthermore, the (A) to (H) functions do not involve any substantial writing but only perfunctory editing of finished written scripts where unforeseen contingencies or technical problems arise prior to completion of the film. Where changes of a substantial nature are required, they are made by writers pursuant to the terms of the Union's contract (Pet. App. 34a; A. 59, 66, 74–76, 143–145; Tr. 429–430, 1310–1311). Thus, a producer's performance of the (A) to (H) editorial functions is analogous to a factory foreman's operation of production line machinery to

correct rank-and-file employees' errors or to instruct rank-and-file employees in new production methods; although such actions may be physically similar to rank-and-file work, the supervisory authority and judgment required to perform them effectively place them above the rank-and-file level.

For these reasons, the Board, adopting the finding of the Administrative Law Judge (ALJ), properly concluded that the (A) to (H) functions performed by the hyphenates during the strike were not work that would have been performed by rank and file employees had they been on the job. These were "functions which the parties have acknowledged do not constitute work reserved to [the Union's] non-hyphenate members under the agreements, but rather are accepted as a normal part of the duties and responsibilities of the executives and supervisors * * * employed by the employers involved" (Pet. App. 35a). And, as shown in our main brief (Bd. Br. 15 n. 14), there can be no doubt that the hyphenates were supervisors who possessed and exercised the authority to adjust grievances or bargain collectively on behalf of the Employers, within the meaning of Section 8(b)(1)(B), National Labor Relations Act, as amended, 61 Stat. 141, 29 U.S.C. 158(b)(1)(B).

2. The Union (Un. Br. 30–31) and *amicus curiae* American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) (Am. Br. 28–35) contend that the "deprivation theory" for finding a violation of Section 8(b)(1)(B) advanced in the Board's brief (Bd. Br. 16–17) was not the basis for the Board's decision in this case. Both the Union and the AFL–

CIO acknowledge (Un. Br. 30; Am. Br. 30 n. 13) that the ALJ found a violation of Section 8(b)(1)(B) on reasoning similar to that in the Board's brief,[1] but conclude that the Board affirmed the ALJ only on the theory of its earlier decisions in *Chicago Typographical Union No. 16* (*Hammond Publishers, Inc.*), 216 NLRB 903, enforced, 539 F. 2d 242 (C.A.D.C.), petition for certiorari pending, No. 76-688, and *New York Typographical Union No. 6* (*Triangle Publications, Inc.*), 216 NLRB 896, which rested on a "carryover" theory.[2] The Union and the AFL-CIO are in error.

[1] The ALJ stated (Pet. App. 63a-64a):

"It is clear that [the Union's] action in this case violated the plain meaning of the statute without the necessity of resort to statutory exegesis. To illustrate: A person performing the function of a director acts in a managerial or supervisory capacity, which normally includes the adjustment of grievances of actors, actresses, craft employees and others. One occupying the position of a producer normally has a similar capacity and similar duties with respect to employee grievances. In addition, if the film is being shot on distant location the producer has authority to negotiate on the spot agreements with local unions. Thus when [the Union] prevented or sought to prevent, such hyphenate members from going to work in their managerial and supervisory capacities as producers and directors during the strike, [the Union] obviously coerced and restrained their employers in the selection of those specific producers and directors for the purpose of collective bargaining and the adjustment of grievances of employees working during the strike within the plain meaning of the statute."

[2] In those cases, the Board held that discipline of a supervisor with grievance adjustment or collective bargaining functions for crossing a picket line substantially to perform supervisory functions during a strike would likely affect the manner in which the supervisor performed those functions in the future. Cf. *Bakery and Confectionery Workers, Local Unions 24 and 119* (*Food Employers Council, Inc.*), 216 NLRB 917 (no carryover effect likely where the supervisors performed more than a minimum amount of rank-and-file work during the strike).

The Board expressly affirmed "the rulings, findings, and conclusions of the Administrative Law Judge" (Pet. App. 11a), with the single exception that it found one additional violation—that the Union violated Section 8(b)(1)(B) not only by disciplining but also by threatening to discipline the hyphenates, including production executives (Pet. App. 12a-13a). These circumstances show that the Board did adopt the deprivation theory for finding a violation of Section 8(b)(1)(B) (n. 1, *supra*), and that the footnote citation of *Hammond Publishers* and *Triangle Publications, supra* (Pet. App. 13a n. 6) merely supplies an alternative basis for the Board's decision.[3] The Board's intent is confirmed by other decisions where the Board has found violations of Section 8(b)(1)(B), in whole or in part, on the theory that the union discipline deprived employers of the services of their supervisors for the performance of supervisory duties,

[3] The AFL-CIO contends (Am. Br. 30 n. 13) that the deprivation theory is inconsistent with the Board's holding that union discipline violates Section 8(b)(1)(B) by carrying over to affect subsequent performance of supervisory functions. The AFL-CIO, noting that the Board has refused to find an unlawful carryover effect where disciplined supervisors performed more than a minimal amount of rank-and-file work during the strike (see *Food Employers Council, supra*), concludes that the deprivation theory would require a finding of a violation in such cases. However, just as no carryover effect is likely where supervisors are disciplined for performing primarily rank-and-file work, employers will not be deprived of true supervisory services by union action which prevents supervisors from performing substantial nonsupervisory work. Therefore, union discipline of supervisors for performing rank-and-file work would be lawful under both the carryover and the deprivation theories.

which included grievance adjustment or collective bargaining, during a strike.[4]

3. The AFL–CIO and the Union contend (Am. Br. 31–33; Un. Br. 31–32) that the deprivation theory proves too much: first, it would result in a finding of a violation of Section 8(b)(1)(B) even without a showing that the supervisors, in fact, would have been called upon during the strike to perform grievance adjustment or collective bargaining functions; second, the effect on the employer would allegedly be the same if the supervisors had decided not to cross the picket line of their own volition, rather than as a result of the threat of union discipline. This contention does not withstand analysis.

As noted in the Board's brief (Bd. Br. 18–19), Section 8(b)(1)(B) makes it unlawful for a union to restrain or coerce "an employer in the *selection* of his representatives for the purposes of collective bargaining or the adjustment of grievances" (emphasis added). When an employer confers upon a supervisor collective bargaining or grievance adjustment authority, he has selected that person as his representative for those purposes whenever the occasion for the exercise of such authority arises; the selection is not withdrawn on those days when the supervisor may have no occasion to engage in collective bargaining or

[4] See *Wisconsin River Valley District Council* (*Skippy Enterprises, Inc.*), 218 NLRB 1063, 1064, enforced, 532 F. 2d 47 (C.A. 7); *Warehouse Union Local 6* (*Associated Food Stores, Inc.*), 220 NLRB 809, 810; *Glaziers and Glassworkers Local Union No. 1621* (*Glass Management Association*), 221 NLRB 509, 511; *Local 322, Laborers' Int'l Union* (*Kingsley Drilling*), 229 NLRB No. 139, May 24, 1977.

grievance adjustment. Accordingly, where, as a result of union discipline or the threat thereof, a supervisor with such authority refrains from crossing a picket line to perform his normal supervisory functions, the employer, without more, is deprived of the representative he has selected for collective bargaining or grievance adjustment purposes.[5]

Equally unpersuasive is the argument that, since the effect on the employer is the same whether a supervisor refuses to cross the union's picket line of his own volition or because of the union's threat of discipline, the latter factor cannot be sufficient to establish a violation of Section 8(b)(1)(B). This

[5] The Union contends that the only supervisors who were disciplined were those "who *did* show up for work and with respect to whom the employer in fact was *not* deprived of his representatives * * *" (Un. Br. 30–31). However, as shown in the Board's brief (Bd. Br. 16–17), while this discipline did not deprive the Employers of the services of those supervisors in this strike, the likely effect of the discipline would be to deprive them of their collective bargaining or grievance adjustment services in future strikes.

Moreover, the Union suggests (Un. Br. 30) that, since the supervisors who refused to cross the picket line were not disciplined, the Employers were not restrained or coerced respecting them. This overlooks that the refusal was attributable to the Union's threat of discipline, which constitutes restraint and coercion within the meaning of Section 8(b)(1)(B) no less than the actual imposition of discipline (Bd. Br. 16). Nor was it necessary to establish that supervisors who refused to cross the picket line "did so out of fear of discipline rather than because of appeals to their union consciousness" (Un. Br. 30). Having unlawfully threatened the supervisors with discipline, the Union has the burden "to disentangle the consequences for which it was chargeable from those from which it was immune" (*National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 872 (C.A. 2)).

argument wholly overlooks the union's coercion, which is what the statute prohibits. A picket line at a struck facility is a general appeal to all persons working at or furnishing supplies and services to that facility to refrain from doing so. See *Steelworkers* v. *National Labor Relations Board,* 376 U.S. 492, 499. A supervisor who honors it without the threat of reprisal does so freely; the employer is thus deprived of the supervisor's services as a result of the supervisor's will rather than union restraint or coercion. But where the supervisor's decision is induced by threats of union discipline it ceases to be a matter of free choice; the employer is thus deprived of the supervisor's services as a result of union restrain or coercion. It is this restraint and coercion that Congress has prohibited, and because of its presence here the union may properly be charged with responsibility for depriving the employer of his selected representative for the purposes specified in Section 8(b)(1)(B).*

The foregoing analysis is not inconsistent with *Local 357, Teamsters* v. *National Labor Relations Board,* 365 U.S. 667, and *National Labor Relations Board* v. *News Syndicate Co.,* 365 U.S. 695 (Un. Br. 20; Am. Br. 22–24). In those cases, the Court held that contract provisions which were lawful on their face (provisions giving the union the exclusive right to refer ap-

* The Union's intent to deprive the Employers of the hyphenates' services is graphically shown by the undisputed record evidence. The Union conducted a special meeting for hyphenates where a Union official emphasized that the strike rules would apply to hyphenates employed in purely supervisory capacities. Union officials also telephoned individual hyphenates before and during the strike to repeat this message (Pet. App. 38a, 42a–43a).

plicants for employment, and requiring all foremen to be union members) could not be found to be discriminatory within the meaning of Section 8(b)(2) of the Act, 29 U.S.C. 158(b)(2), merely because of the possibility that they might be carried out in a discriminatory manner in the future. Here, on the other hand, Section 8(b)(1)(B) is involved, and, in order to establish a violation thereof, it is not necessary to presume that the union will act illegally in the future. The Board, in finding a violation of Section 8(b)(1)(B) here, merely holds the union responsible for the reasonably foreseeable consequences of its admitted acts of discipline and threats thereof directed at the employer's management representatives. Cf. *Radio Officers' Union* v. *National Labor Relations Board,* 347 U.S. 17, 45.

Reliance (Un. Br. 20, 34; Am. Br. 27) upon *National Labor Relations Board* v. *Insurance Agents,* 361 U.S. 477, is also misplaced. In that case, the Court, reversing the Board, held that a union's resort to economic harassment—such as intermittent work stoppages—while otherwise bargaining in good faith did not violate the union's statutory bargaining obligation. The Court believed that, if the Board "in the guise of determining good or bad faith in negotiations could regulate what economic weapons a party might summon to its aid," it "would be in a position to exercise considerable influence upon the substantive terms on which the parties contract." *Id.* at 490. No similar danger is present with respect to the Board's interpretation of Section 8(b)(1)(B) in this case.

CONCLUSION

For these reasons, as well as those set forth in our principal brief, the judgment of the court of appeals should be reversed, and the case should be remanded to that court with instructions to enforce the Board's order.

Respectfully submitted.

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Nos. 76-1121, 76-1153 and 76-1162

No. 76-1121

AMERICAN BROADCASTING COMPANIES, INC., CBS INC. and NATIONAL BROADCASTING COMPANY, INC.,

Petitioners,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,

Respondent.

No. 76-1153

ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,

Petitioner,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,

Respondent.

No. 76-1162

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,

Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

Reply Brief for Petitioners American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc.

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TABLE OF CONTENTS

	Page
I. THE GUILD'S MOTIVE OR OBJECT IN IMPOSING DISCIPLINE IS IRRELEVANT	2
II. THE BOARD'S DETERMINATION THAT THE GUILD'S CONDUCT MAY ADVERSELY AFFECT THE SUPERVISOR-MEMBERS' PERFORMANCE AS GRIEVANCE ADJUSTERS AND COLLECTIVE BARGAINERS IS SOUNDLY SUPPORTED BY THE EVIDENCE AND BY LOGIC	4
III. THE NETWORKS WERE RESTRAINED AND COERCED IN THE SELECTION OF THEIR § 8(b)(1)(B) REPRESENTATIVES	7
IV. FLORIDA POWER SHOULD BE LIMITED TO ITS FACTS	10
A. The Narrow Holding In Florida Power Only Permits Union Discipline Of Supervisor-Members Who Are Used By Their Employer As Strikebreakers	10
B. An Expansion Of Florida Power Beyond Simply Permitting Union Discipline Of Supervisor-Members Who Perform Rank-And-File Struck Work Would Be Inconsistent With § 14(a) Of The Act	12
C. The Underlying Purpose Of Section 8(b)(1)(B) Is To Assure Employers Of The Loyalty Of Their Grievance Adjusters And Collective Bargainers	13
D. Employers' Self-Help Options To Avoid The Conflict-Of-Loyalties Problem Are Neither Clear Nor Practicable	15
CONCLUSION	18

TABLE OF AUTHORITIES

Cases

	Page
Alberici-Fruin-Colnon, 226 N.L.R.B. No. 189, 94 L.R.R.M. 1159 (1976)	16
Beasely v. Food Fair of North Carolina, Inc., 416 U.S. 653, 661-662 (1974)	12
Chicago Typographical Union No. 16 (Hammond Publishers, Inc.), 216 N.L.R.B. 903 (1975)	2
Florida Power & Light Co. v. I.B.E.W., Local 641, 417 U.S. 790 (1974)	3, 4, 7, 11, 16
I.B.E.W. Local 641 v. NLRB, 487 F.2d 1143, 1153-54 (D.C. Cir. 1973)	8, 10, 11, 13
I.L.G.W.U. v. NLRB, 366 U.S. 731 (1961)	2
Labor Board v. Erie Resistor Corp., 373 U.S. 221, 228 (1963)	2, 6
NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175 (1967)	10
NLRB v. Burnup and Sims, Inc., 379 U.S. 21 (1964)	3
New York Typographical Union No. 6 (Triangle Publications, Inc.), 216 N.L.R.B. 896 (1975)	2
Radio Officers' Union v. Labor Board, 347 U.S. 17, 45 (1954)	2, 5, 6
Republic Aviation Corp. v. Labor Board, 324 U.S. 793, 798-800 (1945)	5
San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.), 172 N.L.R.B. 2173 (1968)	8

	Page
Sibilio's Golden Grill, Inc., 227 N.L.R.B. No. 260, 94 L.R.R.M. 1439 (1977)	16
Teamsters Local v. Labor Board, 365 U.S. 667, 675 (1961)	2, 6
Universal Oil Products Co. v. NLRB, 445 F.2d 155 (7th Cir. 1971)	17

Legislative Materials

H. R. Rep. No. 245, 80th Cong., 1st Sess., 16 (1947)	14

In The

Supreme Court of the United States

October Term, 1977
Nos. 76-1121, 76-1153 and 76-1162

No. 76-1121

American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc.,
Petitioners,

vs.

Writers Guild of America, West, Inc.,
Respondent.

No. 76-1153

Association of Motion Picture and Television Producers, Inc.,
Petitioner,

vs.

Writers Guild of America, West, Inc.,
Respondent.

No. 76-1162

National Labor Relations Board,
Petitioner,

vs.

Writers Guild of America, West, Inc.,
Respondent.

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit.

Reply Brief for Petitioners American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc.

I.

THE GUILD'S MOTIVE OR OBJECT IN IMPOSING DISCIPLINE IS IRRELEVANT.

The Guild argues that its coercive conduct of threatening, disciplining and blacklisting the supervisor-members falls outside the proscription of § 8(b)(1)(B) because the only reason or object of the Guild was to achieve strike solidarity and was not to punish the supervisor-members for the exercise of grievance resolving or collective bargaining functions. Under the Act, however, the Guild's subjective intention is irrelevant; it is the coercive conduct itself and its actual or foreseeable consequences which determines liability. *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.),* 216 N.L.R.B. 903 (1975); *New York Typographical Union No. 6 (Triangle Publications, Inc.),* 216 N.L.R.B. 896 (1975). These Board cases are fully in accord with this Court's decisions that, whatever the degree of motive required as an element of an unfair labor practice, it is fully supplied in this case by "application of the common-law rule that a man is held to intend the foreseeable consequences of his conduct." *Radio Officers' Union v. Labor Board,* 347 U.S. 17, 45 (1954). *Accord, Labor Board v. Erie Resistor Corp.,* 373 U.S. 221, 228 (1963), *Teamsters Local v. Labor Board,* 365 U.S. 667, 675 (1961).

Moreover, not only has the Board determined that subjective motive is irrelevant in § 8(b)(1)(B) cases, but this Court has made similar holdings with respect to other Section 8 offenses, which, like § 8(b)(1)(B), involve restraint and coercion. For example, in *I.L.G.W.U. v. NLRB,* 366 U.S. 731 (1961), the Court upheld the Board's finding of § 8(a)(1) and § 8(a)(2) violations on the part of a company which had bargained with a union that did not represent a majority of its employees, despite the company's good faith belief to the contrary. The Court stated:

> "We find nothing in the statutory language prescribing *scienter* as an element of the unfair labor practices here involved." 366 U.S. at 739.

Similarly, in *NLRB v. Burnup and Sims, Inc.,* 379 U.S. 21 (1964), the Court held that an employer violated Section 8(a)(1) for discharging employees engaged in union activity, despite the employer's good faith and objectively reasonable belief that the employees had threatened to dynamite his plant.

Thus, the only possible relevant inquiry concerning the Guild's motive is whether the Guild's campaign of coercive conduct was likely as a matter of fact to have the foreseeable result of adversely affecting the supervisor-members in the performance of their collective bargaining and grievance adjusting functions. The Board's determination that the Guild's conduct would likely have this adverse effect is both supported by the record and is logical as is demonstrated *infra,* at pp. 4-8.

Finally, the Guild's argument regarding its intent is totally inconsistent with the Court's approach to § 8(b)(1)(B) in *Florida Power & Light Co. v. I.B.E.W., Local 641,* 417 U.S. 790 (1974). The Guild's asserted reason for the discipline it imposed — strike solidarity — is the natural and typical reason that would be given by virtually any union which disciplines supervisor-members who work behind a picket line, including the unions involved in *Florida Power.* This Court would have had no need to make the careful distinction it did between the types of work performed by supervisors during a strike if the intent of the unions had been a relevant or controlling factor. Hence, it is submitted that the Guild's mental state is clearly not relevant in coercion cases. Accordingly, the intention, purpose or motive of the Guild's conduct has no bearing on the instant cases.

II.

THE BOARD'S DETERMINATION THAT THE GUILD'S CONDUCT MAY ADVERSELY AFFECT THE SUPERVISOR-MEMBERS' PERFORMANCE AS GRIEVANCE ADJUSTERS AND COLLECTIVE BARGAINERS IS SOUNDLY SUPPORTED BY THE EVIDENCE AND BY LOGIC.

The Guild argues that because there "was not evidence of an intent on the Guild's part to affect the employers' selection of Section 8(b)(1)(B) representatives," and because there was "no evidence concerning an adverse effect" of the Guild's conduct upon the supervisor-members' performance of their grievance adjusting and collective bargaining functions during the strike, there was thus no evidence from which the Board could conclude that the Guild's coercive conduct would adversely affect the supervisor-members' future performance of their grievance adjusting and collective bargaining functions. (Guild's Brief at 22.) The Guild then surmises that the reason for the lack of evidence is that the case was tried prior to *Florida Power*.

It is submitted that the Guild's arguments miss entirely the issue raised by *Florida Power*. In *Florida Power*, the Court clearly stated that union discipline of a supervisor-member can constitute a violation of § 8(b)(1)(B) when that discipline "*may* adversely affect" the supervisor-members' performance as grievance adjusters and collective bargainers. 417 U.S. at 804 (emphasis supplied.) In the instant cases, the Board found that the Guild's entire course of conduct, from its strike rules to its threats to its trials, fines and blacklisting was likely to — that is, "may" — affect the supervisor-members' performance of their grievance adjusting and collective bargaining duties in the future. Where, as in the instant cases, the legal test for determining the existence of a violation is the *probable* effect on future behavior —

here, the future performance of grievance adjusting and collective bargaining — there can be no *specific* evidence of the exact probability or the exact effect. *Florida Power's* adverse effect test does not require the Board to be able to predict with certainty that the Guild's conduct will adversely affect supervisor-members as grievance adjusters or collective bargainers; nor does it require the Board to be able precisely to predict the actual effect of the Guild's conduct on the supervisor-members' future performance of their grievance adjusting and collective bargaining duties. Thus, to require as the Guild now urges, that the record contain specific evidence of what the supervisor-members' future conduct is *certain* to be requires an evidentiary showing that is impossible and one which is clearly not required by *Florida Power*.

To the contrary, this Court has long recognized that,

> ". . . the statutory plan for an adversary proceeding 'does not go beyond the necessity for the production of evidential facts, however, and compel evidence as to the results which may flow from such facts . . . . An administrative agency with power after hearings to determine on the evidence in adversary proceedings whether violations of statutory commands have occurred may infer within the limits of the inquiry from the proven facts such conclusions as reasonably may be based upon the facts proven. One of the purposes which lead to the creation of such boards is to have decisions based upon evidential facts under the particular statute made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration . . . .'" *Radio Officers' Union v. Labor Board, supra,* at 48-49, quoting in part, *Republic Aviation Corp. v. Labor Board*, 324 U.S. 793, 798-800 (1945).

In the instant cases the Board properly performed its statutory function. To the clear evidential facts it applied its expertise and experience. It determined, consistent with the standard in *Florida Power*, that the Guild's discipline of the supervisor-members may adversely affect their future performance as grievance adjusters and collective bargainers. That this finding is based in part on the Board's understanding of human experience does not, as the Guild contends, demonstrate a lack of an evidentiary basis for "it is permissible to draw on experience in factual inquiries." *Radio Officers' Union v. Labor Board, supra,* at 49. *Accord, Teamsters Local v. Labor Board, supra,* at 675 (1961); *Labor Board v. Erie Resistor Corp., supra,* at 227.

The Guild argues that it is illogical and "[c]ontrary to common sense" to believe that the Guild's course of conduct may have an adverse carry-over effect on the supervisor-members' performance of their grievance adjusting and collective bargaining functions. (Guild's Brief at 29.)

To the contrary, it is evident that the logical, indeed almost inescapable conclusion, is that a supervisor-member vested with grievance adjusting or collective bargaining authority*, having once been subjected to the Guild's sweeping *in terrorem* tactics as a result of merely performing his normal supervisory duties would, with good cause, tread very cautiously in performing his supervisory duties including grievance adjusting and collective bargaining in the future. Indeed, the exercise of these normal supervisory duties such as hiring, firing, assigning work and credits, and directing employees is the primary and routine source of employee grievances. These management actions, and the individual supervisor-members herein who are responsible for them, are inextricably intertwined with the grievance adjusting process. The disciplined supervisor-member is thus very likely to conform his future conduct as a grievance adjuster or collective bargainer to what he believes the Guild desires at the time because, if he does not, he can be severely punished. Such behavior is reasonably to be expected from a reasonable person. What does defy common sense and human experience, however, is the arbitrary inference the Guild would have this Court draw in order to fit these cases within *Florida Power's* narrow holding that union discipline of supervisor-members who are *strikebreakers* is not prohibited by § 8(b)(1)(B). This inference is that a supervisor-member who has been instructed by the Networks not to perform rank-and-file struck work, who has not performed rank-and-file struck work, and who has not been charged with a violation of any of the Guild's strike rules prohibiting the performance of struck work, would somehow reasonably believe that he in fact was disciplined, or in the future would only be disciplined, for performing rank-and-file struck work.

* The Guild's argument that not all the supervisor-members adjusted grievances of Guild members or collectively bargained with the Guild is without merit. Clearly, the Board found the supervisor-members to be § 8(b)(1)(B) representatives and this finding is well supported by the record. Networks' Brief at 31-37. Moreover, supervisor-members have authority to and do in fact adjust grievances of Guild members. *Id.* at 32-34.

III.

THE NETWORKS WERE RESTRAINED AND COERCED IN THE SELECTION OF THEIR § 8(b)(1)(B) REPRESENTATIVES.

Amicus argues that even assuming the Guild's discipline of supervisor-members did adversely affect their performance as grievance adjusters and collective bargainers, § 8(b)(1)(B) would not be violated because the employer's *selection* of his representative for the purposes of adjusting grievances or collective bargaining would not be restrained or coerced. (Amicus Brief at 19-20.) Thus, amicus argues that the only effect of the

union sanctions would be on the *manner* in which the supervisor-members performed their grievance adjusting and collective bargaining duties. This argument is without merit and should be rejected.

As amicus recognizes, this Court now would have to conclude that *San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.)*, 172 N.L.R.B. 2173 (1968), was incorrectly decided. (Amicus Brief at 19-20.) The Court refused to do this in *Florida Power* and assumed that *Oakland Mailers* remained good law. 417 U.S. at 805. In *Oakland Mailers* and subsequently*, the Board has consistently held that § 8(b)(1)(B) is violated when a union disciplines supervisor-members vested with grievance adjusting and collective bargaining authority for the manner in which they perform their supervisory duties. The Board has long recognized that the ability of a union to dictate to a supervisor the manner in which he exercises his grievance adjusting or collective bargaining authority totally undermines and negates both the employer's initial selection of that individual, as well as the employer's continued selection of that individual as his representative by continuing him in that capacity. Thus, while the identity of the employer's § 8(b)(1)(B) representative clearly is important to the employer and union restraint and coercion applied directly to the employer to influence the employer's selection of a particular person as his representative clearly violates § 8(b)(1)(B), so too does union restraint or coercion applied indirectly to the employer through discipline of his supervisor which incapacitates that supervisor as an effective grievance adjuster or collective bargainer equally restrain and coerce the employer in the selection of his representative. See *I.B.E.W. Local 641 v. NLRB*, 487 F.2d 1143, 1153-54 (D.C. Cir. 1973).

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* These cases are cited in the Network's Brief at 23 (first footnote).

To illustrate, assume the employer is considering filling a supervisory position with A or B, both of whom have been out of the bargaining unit for some time but have retained some form of union membership. A is very vigilant, strictly adheres to company rules and policies, is hard-nosed when it comes to infractions of company rules and policies, and is expected to be hard-nosed when dealing with the union. Candidate B, on the other hand, is thought by the union to be lax, "soft" and likely easily to be persuaded by the union and to be less severe than A in the enforcement of company rules and policies. To the chagrin of the union, the employer selects A to become supervisor and vests him with collective bargaining and grievance adjusting authority because of the above-described qualities. Supervisor A begins to perform his supervisory duties including grievance adjusting. The union threatens supervisor A with discipline and fines because he is performing his supervisory duties as requested by his employer. Following the threats, supervisor A takes on more of the qualities of B; he begins to become "soft" with the union and lax in the enforcement of company rules and policies. To say that the union has not restrained or coerced the employer in the selection of A because the identity of A remains the same, glosses over what the participants in this employment setting, as well as the Board, know has happened. Supervisor A may remain A, but in reality, as far as the union and the employees are concerned, he is very likely to become B. Clearly, the employer's selection of the § 8(b)(1)(B) representative possessing the qualities desired by the employer has been interfered with. The employer is reasonably likely to be left with a supervisor who has a diminished capacity to function effectively as a grievance adjuster and collective bargainer on the employer's behalf. The union restraint and coercion applied indirectly through the supervisor to the employer has interfered with the employer's selection of

his § 8(b)(1)(B) representative as much as if the union had applied direct restraint and coercion to the employer to select B rather than A.

Thus, to conclude in the instant cases that the Networks were not restrained or coerced in their selection of § 8(b)(1)(B) representatives because the identity of such representatives was not changed during the strike is to engage in a fantasy. The Board, cognizant of the industrial realities of the situation, properly found a violation of § 8(b)(1)(B).

IV.
FLORIDA POWER SHOULD BE LIMITED TO ITS FACTS.*

A. The Narrow Holding In Florida Power Only Permits Union Discipline Of Supervisor-Members Who Are Used By Their Employer As Strikebreakers.

The Guild's assertion that for over twenty years a union's right to discipline through fines *any* of its members was generally accepted as lawful is incorrect. It was not in fact until 1967 that this Court narrowly upheld in a 5-4 decision the legality of disciplinary fines of *employee*-members. See *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967). The advent of union discipline of supervisor-members who perform their supervisory duties is relatively recent as is the notion that such union discipline cannot be proscribed by § 8(b)(1)(B). The unions in *Florida Power* fined only those supervisor-members who performed rank-and-file struck work. The unions involved conceded in the court of appeals that supervisor-members who cross picket lines to perform supervisory duties are immune from union discipline. *I.B.E.W., Local*

* The Networks' argument that *Florida Power* rather than be expanded to fit the instant cases within its narrow holding should instead be overruled is set forth in our opening brief at 37-47.

641 v. NLRB, 487 F.2d 1143, 1157 (D.C. Cir. 1973). In oral argument before this Court in *Florida Power*, the unions again conceded this point:

> "But we are taking the principal position here — and I am certainly willing to argue on that basis — that the board may prohibit under § 8(b)(1)(b) [sic] the imposition of union rules on supervisors when they are functioning as supervisors or as a management agent." Transcript of Proceedings before the Court in Nos. 73-556, 73-795 on April 24, 1974, at p. 29. (Argument of Mr. Laurence J. Cohen, Esq. for Union Respondents.)

In addition, the AFL-CIO appearing as amicus in *Florida Power* argued that union discipline of supervisors who engage in *"strikebreaking"* — that is, the performance of rank-and-file struck work — should be found lawful. Brief for the American Federation of Labor and Congress of Industrial Organizations as Amicus Curiae in *Florida Power, supra*, at pp. 8, 16. (Emphasis supplied.)

From the foregoing and in view of the narrow and precise language used by the majority to state the holding in *Florida Power*, 417 U.S. at 814, it is apparent that the case merely carved out a "rank-and-file struck work" exception to the general notion of the parties to that litigation, as well, we might add, to the notion of unions and employers generally, that employers are entitled to have their supervisors be free from union discipline. While we believe along with the dissent in *Florida Power* that the rank-and-file struck work exception is at odds with the collective bargaining process because the performance of rank-and-file struck work by supervisors is itself part and parcel of collective bargaining, even the exception, if properly applied to the instant cases, requires enforcement of the Board's order herein.

B. An Expansion Of Florida Power Beyond Simply Permitting Union Discipline Of Supervisor-Members Who Perform Rank-And-File Struck Work Would Be Inconsistent With § 14(a) Of The Act.

Section 14(a) of the Act provides that "no employer . . . shall be compelled to deem individuals defined . . . as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining." Were a union lawfully permitted, however, to discipline and fine supervisor-members as they do any other employee-members the effect would be to force employers to treat their supervisors *as* employees by divesting them of that supervisory authority and those duties the exercise of which the union will not permit.

It is submitted that § 14(a) contemplates that an employer is entitled under the Act to expect that he can use a supervisor *as* a supervisor without union interference with the relationship. The legislative history of the 1947 Amendments "compels the conclusion that Congress' dominant purpose in amending §§ 2(3) and 2(11), and enacting § 14(a) was to redress a perceived imbalance in labor-management relationships that was found to arise from putting supervisors in the position of serving two masters with opposed interests." *Beasely v. Food Fair of North Carolina, Inc.*, 416 U.S. 653, 661-662 (1974). Failure to read the Act as providing protection to the employer to use his supervisors in that capacity and as the employer determines, results in compelling the employer to deem his supervisors as employees in violation of § 14(a).

Read in this context, the rank-and-file struck work exception in *Florida Power* becomes more understandable. For if one rejects the notion, as did the *Florida Power* majority, that the performance of rank-and-file struck work by a supervisor is both supervisory work and a

vital part of the collective bargaining process, then a supervisor-member so engaged is performing duties no different than those of a rank-and-file employee. Under these circumstances, however, it may be argued that it is neither the union nor the law's failure to proscribe union interference with the employer-supervisor relationship that results in treating a supervisor as an employee, but rather it is the employer alone who has deemed his own supervisor an employee by having him function as a rank-and-file employee. To the extent that the employer himself treats his supervisor as an employee by requiring him to perform rank-and-file struck work, a corresponding removal of the supervisor's immunity from union discipline seems more consistent with § 14(a).

While the foregoing analysis was not articulated by the Court in *Florida Power*, it was suggested by the court of appeals in that case, 487 F.2d 1143, 1157, and does help explain the Court's narrow holding. The analysis also requires that *Florida Power* not be expanded to permit union discipline of supervisor-members who perform in their supervisory capacities.

C. The Underlying Purpose Of Section 8(b)(1)(B) Is To Assure Employers Of The Loyalty Of Their Grievance Adjusters And Collective Bargainers.

The argument to the effect that after *Florida Power* the loyalty to an employer of a supervisor-member vested with grievance adjusting and collective bargaining authority is irrelevant in a § 8(b)(1)(B) proceeding is without merit. Union discipline of supervisor-members who are vested with grievance adjusting or collective bargaining authority which interferes with, or is likely to interfere with their performance of these functions, thereby impairs the loyalty of such individuals as grievance adjusters and collective bargainers in direct violation of § 8(b)(1)(B).

It is not disputed that even under the broadest reading of *Florida Power,* employers are entitled to the undivided loyalty of their supervisors. How that loyalty is achieved, whether it is by self-help, through unfair labor practice proceedings, or both, will continue to be an issue so long as unions continue to discipline supervisors for the performance of their supervisory duties. It hardly seems likely, however, that Congress' concern with resolving the conflict-of-loyalties problem with respect to supervisors as a class, was not also *a fortiori* a concern with respect to assuring the loyalty of an employer's grievance adjusters and collective bargainers, whether or not they are also supervisors. Indeed, the House Report's discussion of the proposed amendments to the definition of supervisor assumes that it is precisely in the areas of grievance adjusting and collective bargaining where management's need for supervisory loyalty is paramount:

> *"Management, like labor, must have faithful agents.* If we are to produce goods competitively and in such large quantities that many can buy them at low cost, then, just as there are people on labor's side to say what workers want and have a right to expect, there must be in management and loyal to it persons not subject to influence or control of unions, not only to assign people to their work, to see that they keep at their work and do it well, to correct them when they are at fault, *and to settle their complaints and grievances,* but to determine how much work employees should do, *what pay they should receive for it, and to carry on the whole of labor relations."* H. R. Rep. No. 245, 80th Cong., 1st Sess., 16 (1947) (emphasis in text supplied.)

Notwithstanding the admittedly scant specific legislative history about § 8(b)(1)(B), it is the language of the section itself, whether considered alone or in the con-

text of the realities of the collective bargaining process, which evinces a clear congressional purpose that an employer be assured of the undivided loyalty of his grievance adjusters and collective bargainers. The only conceivable reason to protect the employer's § 8(b)(1)(B) right to *select* is to assure to him those individuals who will champion his rights and remain loyal to him. To achieve this loyalty an employer certainly may try to exercise self-help; the act of selection is itself self-help. Given its narrowest possible meaning, however, § 8(b)(1)(B) is also intended to effectuate this purpose.

D. Employers' Self-Help Options To Avoid The Conflict-Of-Loyalties Problem Are Neither Clear Nor Practicable.

If § 8(b)(1)(B) is not a part of the solution to the conflict-of-loyalties problem Congress sought to resolve by the 1947 amendments to the Act, employers wishing to achieve the undivided loyalty of their supervisors must attempt to take the unilateral actions suggested in *Florida Power,* 417 U.S. at 808-09. None of these actions, however, guarantees with any degree of certainty the practical accomplishment of that objective without incurring additional legal risks.

Thus, an employer's right to refuse to hire or promote employee-members as supervisors vested with grievance adjusting or collective bargaining authority is viable only in situations where there are candidates for supervisory positions who either are not members of the union or who can resign such membership. In the instant cases, notwithstanding the Guild's contention that the fact is irrelevant, the Guild would not permit the supervisor-members to resign their Guild membership. In an industry such as the entertainment industry, a substantial percentage of the management comes from the rank-and-file. The

"option" of refusing to hire union members as supervisors is not practicable.

Similarly, the right of an employer to discharge supervisors because of their involvement in union activities or their union membership is limited, as the Court recognized in *Florida Power,* 417 U.S. 808, if such discharges may be found to interfere with, restrain or coerce employees in the exercise of their rights under the Act. If other non-supervisory employees knew or had reason to believe that a supervisor's discharge occurred because of activity which if engaged in by the employees would be protected, thereby engendering in employees a fear of retaliation if they continued to engage in what for them is protected activity, the discharge of the supervisor would be found unlawful and the supervisor reinstated with backpay. See *Alberici-Fruin-Colnon,* 226 N.L.R.B. No. 189, 94 L.R.R.M. 1159 (1976); but cf. *Sibilio's Golden Grill, Inc.,* 227 N.L.R.B. No. 260, 94 L.R.R.M. 1439 (1977). Thus, in the instant cases, had the Networks chosen to discharge supervisor-members for honoring Guild picket lines and striking employee-members knew the reason for such discharges, it is not at all unlikely that the Guild would file unfair labor practice charges on behalf of the discharged supervisor-members seeking their reinstatement with backpay on the theory that said discharges interfered with and restrained the § 7 rights of the striking Guild represented rank-and-file employees.

Finally, the third suggested option for self-help which an employer supposedly has to avoid the conflict-of-loyalties problem is to refuse to engage in collective bargaining with supervisors or any union which purports to represent them. However, it is difficult to perceive how the refusal to bargain with supervisors or with a union about their inclusion or exclusion in a collective bargaining agreement or about their duties and status vis-a-vis other

employees solves or avoids the conflict-of-loyalties problem. It merely keeps it off the bargaining table.

The Guild's contention (Guild's Brief at 33) that protection of supervisors from intra-union discipline can be secured by an employer *through* collective bargaining is directly contrary to the notion that refusing to bargain provides a solution. Moreover, the collective bargaining process similarly fails to present an employer with a workable solution to the conflict-of-loyalties problem should the employer decide to forego his clear § 14(a) right not to bargain with a union about his supervisors. Intra-union discipline of supervisors is not a mandatory subject of bargaining. See *Universal Oil Products Co. v. NLRB,* 445 F.2d 155 (7th Cir. 1971). A union is under no compulsion even to discuss with an employer much less agree to immunize supervisors from intra-union discipline. Thus, the collective bargaining process falls far short of providing the sought after solution.

It is apparent that the self-help options theoretically available to employers to resolve or avoid the conflict-of-loyalties problem are not that clear and do not guarantee to employers the ability to assure to themselves the selection and retention of loyal grievance adjusters and collective bargainers which the legislative history of the 1947 amendments so strongly suggests was Congress' intent. Accordingly, the expansion of *Florida Power* to permit union discipline of supervisor-members who perform only their supervisory duties on the basis of self-help options, which, upon closer examination appear to be more illusory than real, is unwarranted.

CONCLUSION

For the reasons stated in the Networks' opening brief and this reply brief, the judgment of the court of appeals should be reversed and the cases remanded with directions to enforce the Board's order.

Respectfully submitted,

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Dated: November 23, 1977

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California 90015.

On NOVEMBER 23, 1977 I caused to be served the within

Reply Brief for Petitioners American Broadcasting Companies, Inc., CBS Inc. and National Broadcasting Company, Inc.

IN THE
SUPREME COURT OF THE UNITED STATES

No. 76-1121
AMERICAN BROADCASTING COMPANIES, INC., CBS INC. and NATIONAL BROADCASTING COMPANY, INC.,
Petitioners,
vs.
WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

No. 76-1153
ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,
vs.
WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

No. 76-1162
NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

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I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on Nov. 23, 1977 at Los Angeles, California.

James A. Bertotti

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } SS.

Rita Korney

On this 23 day of November, A.D., 1977 before me Rita Korney, a Notary Public in and for said County and State, personally appeared James Bertotti known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that James Bertotti executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal and year in this certificate first above written.

OFFICIAL SEAL
RITA KORNEY
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires December 7, 1980

Supreme Court, U. S.
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SEP 30 1977
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Supreme Court of the United States

October Term, 1977

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NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

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WRITERS GUILD OF AMERICA, WEST, INC., *Respondent.*

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

---

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) hereby respectfully moves for leave to file the attached brief *amicus curiae* in the instant case as provided for in Rule 42 of the Rules of this Court. Counsel for the petitioner Labor Board and for respondent have consented to the filing of that brief, but counsel for the employer petitioners have refused such consent.

INTEREST OF THE AMICUS CURIAE

The AFL-CIO is a federation of 108 national and international unions having a total membership of approximately 16,600,000 men and women. Many of the AFL-CIO affiliated unions have supervisor-members, and seek the support of such members when they engage in economic strikes. The disciplining of members, including supervisors, who fail to adhere to union rules during strike situations is one of many ways AFL-CIO unions have traditionally used to assure the solidarity which is basic to a successful strike. Thus, the issue raised in this case is of uncommon importance to the AFL-CIO and its affiliates.

But the AFL-CIO has another, special interest in this case as well. The AFL-CIO filed a brief *amicus curiae* in *Florida Power & Light Co.* v. *IBEW, Local 641,* 417 U.S. 790 (hereafter "*FP&L*"), and counsel for the AFL-CIO argued orally in that case. The opinion in that case appeared to us to instruct the NLRB in no uncertain terms that the broad approach to § 8(b)(1)(B) it adopted beginning in 1968 was entirely wrongheaded and had to be rethought completely. Instead, the Board has insisted that *FP&L* has no application except to the precise fact situation there involved, and has, in our view, refused to abide at all by the reasoning of this Court's opinion. Thus, we are concerned here not only with the outcome of this particular case, but with establishing that, when this Court pronounces a general approach to an area of labor law within the jurisdiction of the NLRB, the Board cannot limit its obedience to the narrow confines of the holding but must proceed with conceptual faithfulness as well to the Court's opinion. Otherwise, not only is this Court's integrity threatened, but litigants are constrained, in order to obtain a fair analysis under the announced principles, to carry on to the courts of appeal, and to this Court, cases presenting every variant on the problem, rather than accepting the judgment of the agency ordinarily entrusted with explicating the NLRA.

ISSUES TO BE COVERED

This case concerns whether a union violates § 8(b)(1)(B) of the NLRA if it disciplines a supervisor-member of a union for crossing a picket line during a strike to perform mainly supervisory duties. The NLRB has, in our view, failed, in deciding this case and many others, to take into account the reasoning, as opposed to the narrow holding, of *FP&L*. The brief for the Writers' Guild is directed primarily to showing that even on the Board's own approach, the decision cannot stand. The Guild, however, has decided that the AFL-CIO, because of its previous involvement in the legal issues here involved, can most appropriately describe the developments since *FP&L* with regard to § 8(b)(1)(B), and show why the entire approach of the Board, and that of counsel for the Board,* is improper under *FP&L*. The attached brief is therefore addressed to these two problems and covers issues not addressed by the brief for the Guild.

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* The decision of the Board and the brief for the Board in this case proceed upon divergent theories with different implications. See Part II of the attached Brief.

CONCLUSION

Because the attached brief covers issues not otherwise discussed by the parties and presents background material on the post-*FP&L* approach of the Board which will be of use to the Court, this motion should be granted.

Respectfully submitted,
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INDEX

	Page
Interest of the Amicus Curiae	1
Introduction and Summary of Argument	1
Argument	6
I. The Board has steadfastly refused to accept this Court's analysis of § 8(b)(1)(B).	6
II. The Board's decision is inconsistent with this Court's interpretation of § (8(b)(1)(B); Board counsel's theory is inconsistent with this Court's decision and that of the Board	15
A. The Board's decision	15
B. Board counsel's theory	28
Conclusion	36

TABLE OF AUTHORITIES CITED

CASES:	Page
American Ship Building Co. v. *Labor Board*, 380 U.S. 300	28
Bakery and Confectionery Workers Locals 24 & 419 (Food Employers Council, Inc.), 216 NLRB 917	10, 30
Beasley v. *Food Fair of North Carolina, Inc.*, 416 U.S. 653	33
Chicago Typographical Union No. 16 (Hammond Publishers, Inc.) 216 NLRB 903	*passim*
Florida Power & Light v. *Electrical Workers*, 417 U.S. 790	*passim*
Glaziers and Glass Workers (Glass Management Association), 221 NLRB 509	13
International Union of Operating Engineers, Local No. 9, AFL-CIO (Shelton Pipeline & Construction Inc. and Robert Collins), 213 NLRB 679	9, 10

	Page
Labor Board v. *Drivers Local Union*, 362 U.S. 274	13
Labor Board v. *Insurance Agents*, 361 U.S. 477	5, 13, 27, 28
Labor Board v. *Metropolitan Insurance Co.*, 380 U.S. 438	30
Labor Board v. *News Syndicate Co.*, 365 U.S. 695	5, 22, 23, 24
Local No. 492, United Brotherhood of Carpenters and Joiners of America (Keystone Conservation Services, Inc.), 211 NLRB 62	7
Meat and Provision Drivers Union, etc. (Quality Meat Packing Co.) 224 NLRB 186	13
New Mexico District Council of Carpenters (A. S. Horner, Inc.), 177 NLRB 500, enf'd. 452 F.2d 1116 (CA 10)	20
New York Typographical Union No. 6 (Triangle Publications, Inc.), 216 NLRB 896	4, 10, 11, 13, 19, 21, 26, 29
NLRB v. *Food Store Employees*, 417 U.S. 1	5, 30
NLRB v. *Pipefitters*, 429 U.S. 507	28
Radio Officers' Union v. *Labor Board*, 347 U.S. 17	24
San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.), 172 NLRB 2173	*passim*
Teamsters Union v. *Labor Board*, 365 U.S. 667	5, 22, 23, 24, 28
Teamsters Union Local 524, etc. (Yakima County Beverage Co.), 212 NLRB 908	7, 9
United Brotherhood of Carpenters and Joiners Local Union No. 14, etc., (Max M. Kaplan Properties), 217 NLRB 202	10, 14
Warehouse Union Local 6, etc., (Associated Food Stores, Inc.), 220 NLRB 809	12

	Page
Wisconsin River Valley District Council etc. (Skippy Enterprises, Inc.), 218 NLRB 1063	12
STATUTE:	
National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*):	
Section 2(11)	26, 28
Section 8(b)(1)(B)	*passim*
Section 8(b)(3)	27
Section 14(a)	26
MISCELLANEOUS:	
Brief for the National Labor Relations Board, No. 339, Oct. Term, 1960	24
Brief for the National Labor Relations Board, Nos. 64 and 85, Oct. Term, 1960	24

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On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

The interest of the amicus curiae is described in the motion for leave to file, which is submitted herewith.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Summary of Argument in the Board's brief begins as follows:

> "Under *Florida Power and Light Co.* v. *International Brotherhood of Electrical Workers*, 417

> U.S. 790, union discipline of a member-supervisor 'can constitute a violation of § 8(b)(1)(B) * * * when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer.' 417 U.S. at 804-805." (Bd. Br. 9-10.)[1]

The same quotation, with the same elision, is repeated in the body of the argument at Bd. Br. 14 as the predicate of the Board's contention that the union's conduct was unlawful under *Florida Power & Light* (hereafter "*FP&L*"). The asterisks in the Board's quotations are a substitute for the word "only" in the original. The excision of that word changes the entire meaning of the passage. The Board's version conveys the meaning that the potential effect of discipline on the supervisor's conduct as grievance adjuster or collective bargainer is *sufficient* to establish a violation of § 8(b)(1)(B). But if the sentence is read in full, and even more properly, if it is read together with the sentence which precedes it, it is apparent that the Court's meaning was that such an effect was a *necessary* condition for finding a violation of § 8(b)(1)(B):

> "Nowhere in the legislative history is there to be found any implication that Congress sought to extend protection to the employer from union restraint or coercion when engaged in any activity other than the *selection* of its representatives for

[1] "Bd. Br." refers to the brief of the National Labor Relations Board before this Court. "Bd. Pet." refers to the Board's petition for certiorari. "Ass'n Br." refers to the brief of the Association of Motion Picture and Television Producers, Inc. "ABC Br." refers to the brief of American Broadcasting Companies, Inc., *et al.* "A" refers to the record appendix in this Court.

> the purposes of collective bargaining and grievance adjustment. The conclusion is thus inescapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." (417 U.S. at 804-805, emphasis in original.)

Indeed, the thrust of the entire part II of this Court's opinion is to reject the Board's sweeping approach to § 8(b)(1)(B) which originated in the *Oakland Mailers* case[2] as inconsistent with its language and legislative history. The Court held:

> "Both the language and the legislative history of § 8(b)(1)(B) reflect a clearly focused congressional concern with the protection of employers in the selection of representatives to engage in two particular and explicitly stated activities, namely collective bargaining and the adjustment of grievances. By its terms, the statute proscribes only union restraint or coercion of an employer 'in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances,' and the legislative history makes clear that in enacting the provision Congress was exclusively concerned with union attempts to dictate to employers who would represent them in collective bargaining and grievance adjustment." (*Id.* at 803.)

Nevertheless, neither the Board's brief nor those of the

[2] *San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.)* 172 NLRB 2173.

other petitioners so much as acknowledge this holding or attempt in any way to do business with this Court's analysis of the text and legislative history of § 8(b)(1)(B). Their failure to do so is, perhaps, a clearer demonstration that their position is without merit than anything which respondent or this *amicus* can say.

The respondent union's brief is devoted primarily to the proposition that the Board erred in finding a violation of § 8(b)(1)(B) even on its own constricted reading of *FP&L*, because the determination that the discipline would have an adverse effect on the disciplined individuals' performance of their § 8(b)(1)(B) functions is arbitrary and unwarranted. We shall not repeat those arguments. In part I of this brief, we shall show that even as, beginning with *Oakland Mailers*, the Board's interpretation of § 8(b)(1)(B) came loose from its moorings in the language of the statute and its legislative history, so, too, the Board's decisions since *FP&L* have taken no heed of this Court's interpretation of § 8(b)(1)(B) in that case. We shall document that the Board has declined even to reconsider *Oakland Mailers* and its progeny but has simply continued as before. The Board has in no case addressed itself to the analysis of the statute and the legislative history which was the basis of this Court's decision in *FP&L*. We note particularly that in the Board's leading *Hammond Publishers* and *Triangle Publications* cases, which were followed in its decision herein, the Board ignored, or misread *FP&L* in at least five separate respects.

In part II, we discuss this case in terms of the analysis followed in *FP&L*. The central premise of *FP&L* is that § 8(b)(1)(B) is a narrowly focused provision concerned exclusively with preventing coercion with respect to *selection* of management representatives to perform two discrete functions—bargaining and adjusting grievances, and that section is *not* concerned with the general problem of assuring supervisor loyalty to management. Yet, the Board's decision here rested on the theory that if a supervisor is disciplined for crossing a picket line to perform mainly supervisory work, he would be influenced when, in the future, he bargains or adjusts grievances.

We demonstrate in part II (A) that this thesis is inconsistent with each link of the *FP&L* analysis: it has nothing to do with *selection* of § 8(b)(1)(B) representatives; it fails to recognize that there is no inextricable connection between general supervisory duties and § 8(b)(1(B) duties; and it rests at bottom directly on the conflict-of-loyalties approach this Court disavowed. We explain also that the Board's inference is without basis in industrial experience, and show that the Board's use of that inference to establish a violation is the same method of decision which was discredited in prior cases. (*Teamsters Union* v. *Labor Board*, 365 U.S. 667; *Labor Board* v. *News Syndicate Co., Inc.*, 365 U.S. 695; and *Labor Board* v. *Insurance Agents*, 361 U.S. 477.)

In part II (B) we discuss the Board's brief, which proceeds on an entirely different approach. It asserts that the union here violated § 8(b)(1)(B) because its efforts, if successful, would deprive the employer of his § 8(b)(1)(B) representatives for the duration of this strike and of any future strike. This theory ought not be considered, since it was not the basis upon which the Board reached its result. *NLRB* v. *Food Employers Council*, 417 U.S. 1, 9. In any event, this theory is inconsistent in the results it ordains both with *FP§L* and with the Board's own post-*FP§L* cases, and it,

like the position of the Board, rests, on examination, on the same conflict-of-loyalties approach with which § 8(b)(1)(B) is unconcerned.

ARGUMENT

I. THE BOARD HAS STEADFASTLY REFUSED TO ACCEPT THIS COURT'S ANALYSIS OF § 8(b)(1)(B).

A. In *FP&L* this Court traced the history of the Board's interpretation of § 8(b)(1)(B):

> "For more than 20 years after § 8(b)(1)(B) was enacted in 1947, the Board confined its application to situations clearly falling within the metes and bounds of the statutory language. • • • In 1968, however, the Board significantly expanded the reach of § 8(b)(1)(B), with its decision in *San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.)*, 172 N.L.R.B. 2173. • • •
>
> Subsequent Board decisions extended § 8(b)(1)(B) to proscribe union discipline of management representatives both for the manner in which they performed their collective-bargaining and grievance-adjusting functions, and for the manner in which they performed other supervisory functions if those representatives also in fact possessed authority to bargain collectively or to adjust grievances. • • •
>
> These decisions reflected a further evolution of the *Oakland Mailers* doctrine. In *Oakland Mailers*, the union had disciplined its supervisor-members for an alleged misinterpretation or misapplication of the collective-bargaining agreement, and the Board had reasoned that the natural and foreseeable effect of such discipline was that in interpreting the agreement in the future, the supervisor would be reluctant to take a position adverse to that of the union. In the subsequent cases, however, the Board held that the same coercive effect was likely to arise from the disciplining of a supervisor whenever he was engaged in management or supervisory activities, even though his collective-bargaining or grievance-adjustment duties were not involved. Through the course of these decisions, § 8(b)(1)(B) thus began to evolve in the view of the Board and the courts 'as a general prohibition of a union's disciplining supervisor-members for their conduct in the course of representing the interests of their employers.'" (417 U.S. at 798-802.)

In *FP&L* and a companion case, the Board tightened the screw another notch, holding "that § 8(b)(1)(B) forbids union discipline of supervisors for performance of rank-and-file work on the theory that the performance of such work during a strike is an activity furthering management's interests" (417 U.S. at 802). That holding was expressly disapproved by this Court on June 24, 1974, as inconsistent with the language and legislative history of § 8(b)(1)(B).

B. The first case in which the Board addressed § 8(b)(1)(B) after *FP&L* was decided was *Teamsters Union Local 524, etc. (Yakima County Beverage Co.)*, 212 NLRB 908.[3] The issue there was whether the respondent union had violated § 8(b)(1)(B) by fining three supervisor members for working contrary to the collective bargaining agreement after regular quitting time without prior agreement from the union.

The Board did not consider whether, although *FP&L* did not overrule *Oakland Mailers*, this Court's reasoning re-

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[3] *Local No. 492, United Brotherhood of Carpenters and Joiners of America and Keystone Conservation Services, Inc.*, 211 NLRB 62, cited at Ass'n Br. 17, was decided on May 31, 1974, two weeks prior to *FP&L*.

quired the abandonment or partial modification of the "principles" declared in that case. Rather, although quoting this Court's "outer limits" language, the Board relied on *Oakland Mailers'* expansive progeny in stating the broad interpretation which it would continue to follow:

> "We have consistently applied these principles in finding union disciplinary actions against supervisors unlawful where they were rooted in disputes between employers and unions over the interpretation of their collective-bargaining agreement. Our concern in each of these cases rested upon the union's use of unlawful means to impose its interpretations directly or indirectly upon an employer's representative which, in turn, infringed upon the employer's right to unencumbered control of that representative." (212 NLRB at 909-910, omitting a footnote which cites many of the same cases referred to at 417 U.S. 800-801.)

Consistent with that approach the Board paid no heed to the factual difference between *Oakland Mailers* and the case before it. Whereas in *Oakland Mailers* the supervisor had been disciplined for misinterpreting or misapplying the agreement with respect to the work of rank and file employees (see 417 U.S. at 800 & 801), the supervisor in *Teamsters* was disciplined for himself performing work in violation of the agreement. The Board did not find that the discipline had been imposed for exercising a § 8(b)(1)(B) function or even a "supervisory or management function"; it stated only that it was "*arguably* for exercising supervisory or management functions" (*id.* at 910, n. 6, emphasis added):

> "We note that Florida Power & Light Co., supra, involved union fines against supervisor/members for allegedly performing rank-and-file work during a strike. Here the fines were imposed in a nonstrike setting, arguably for exercising supervisory or management functions, in an effort to impose the Respondent's interpretation of the collective-bargaining contract upon representatives of the Employer. We do not read the Supreme Court's opinion in Florida Power and Light, supra, to say that a union, consonant with Section 8(b)(1)(B), is free to discipline supervisor/members under the circumstances of the present case." (*Id.*)

This footnote was the Board's only other response to *FP&L* in its *Teamsters* opinion.

The next § 8(b)(1)(B) case decided by the Board followed *FP&L* to hold that a union had not violated § 8(b)(1)(B) by fining a supervisor for crossing a picket line and performing rank and file work. *International Union of Operating Engineers, Local No. 9, AFL-CIO (Shelton Pipeline & Construction, Inc.) and Robert Collins*, 213 NLRB 679. The Board determined that the disciplined union member was in fact a representative of the employer "for the purpose of * * * the adjustment of grievances," but that he "was not engaged in performing the duties of, and acting in the capacity of, grievance adjuster or collective bargainer on behalf of the Employer when he crossed the picket line and performed struck work" (*id.* at 680). Thus, the Board appeared to confine the supervisor-member's protection against discipline to situations in which he performed activity squarely within § 8(b)(1)(B). Moreover, the ALJ's decision in the case shows that what the Board referred to as "rank and file struck work" was work of a kind which the supervisor had also performed during period "when there was a shortage of manpower" (*id.* at 679). This is signifi-

cant, because it is identical to the situation of the supervisors in the instant case who crossed the picket line to perform "(a) through (h) functions"; yet, here, in contrast to *Operating Engineers*, the Board found a violation, apparently treating these as "supervisory functions" because the agreement permitted the supervisors to perform them, see Bd. Pet. 35a, text and note at n. 10.

Any hope that the *Operating Engineers* case signalled a reexamination of the Board's approach to § 8(b)(1)(B) was soon dashed. In fact, the *Operating Engineers* case has not been cited in any Board majority opinion.[4]

The major development in the Board's post-*FP&L* interpretation of § 8(b)(1)(B) occurred in three cases decided on the same day—*New York Typographical Union No. 6 (Triangle Publications, Inc.)*, 216 NLRB 896; *Chicago Typographical Union No. 16 (Hammond Publishers, Inc.)*, 216 NLRB 903; and *Bakery and Confectionery Workers Local Unions 24 and 419 (Food Employers Council, Inc.)*, 216 NLRB 917. In each of these cases the union had disciplined a supervisor member for crossing a picket line during a strike by the union. The rule which emerged from these three cases was that a union violates § 8(b)(1)(B) if it disciplines a supervisor who after crossing its picket line performs "not only supervisory duties (including grievance adjusting) but also, at least arguably, a minimal amount of rank-and-file work during the work stoppage" (*Hammond Publishers*, 216 NLRB at 904). The term "minimal"

[4] The only reference to the case in Shepard's Federal Labor Law Citator through August 1977 is in a concurring opinion by Member Fanning, who has consistently disagreed with the majority's analysis. See *United Brotherhood of Carpenters and Joiners Local Union No. 14, etc.*, 217 NLRB 202, 203, n. 6.

amount of rank-and-file work does not mean work which is so slight as to be regarded as "*de minimis*" in legal parlance, see p. .... *infra*.

Because the Board in the instant case followed *Hammond* and *Triangle* to find a violation (Bd. Pet. 13a, n. 6) we leave a more detailed discussion of the Board's rationale in those decisions to the next section of our brief. However, certain general observations concerning the Board's approach to *FP&L* are appropriate at this point.

1. The Board did not discuss this Court's analysis of the language and legislative history of § 8(b)(1)(B). It did not even acknowledge, must less attempt to deal with, the Court's conclusion that these "reflect a clearly focused congressional concern * * *" (417 U.S. at 803, quoted at p. 17, *infra*).

2. The Board treated as the single issue whether discipline "may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer" (216 NLRB at 903-904, quoting 417 U.S. at 804-805). It did not consider that this Court said that a violation can be found "only" under those circumstances, but took it as given, despite everything else in the opinion, that a "may affect" finding establishes a violation. Indeed, the Board rather incredibly regarded this Court's assumption that *Oakland Mailers* itself may be on the "outer periphery" under that test as implict approval of the *Oakland Mailers* rationale:

> "By assuming without deciding that Oakland-Mailers' fell within the outer limits of its test, the Supreme Court has implicitly recognized that an adverse carryover effect may result where the dis-

ciplined supervisor had been engaged in the activity of contract interpretation." 216 NLRB at 904.[5]

In a footnote to this passage, the Board took comfort from this Court's description of *Oakland Mailers*:

> "We note that in discussing Oakland-Mailers' the Supreme Court recognized that: 'the Board had reasoned that the natural and foreseeable effect of such discipline was that in interpreting the agreement in the future, the supervisor would be reluctant to take a position adverse to that of the union.' " *Id.* at n. 7.

But the fact that this Court correctly understood the Board's reasoning in a case cannot mean that it agreed therewith, when the Court at the same time expressly reserved decision on whether that case was correct. And of course, the Board necessarily ignored the characterizations of the other pre-*FP&L* cases as an extension of *Oakland Mailers*, 417 U.S. at 800-802, quoted at p. 6, *supra*, and failed to consider that these other cases may have been implicitly disapproved when the Court assumed that *Oakland Mailers* itself is at the outer periphery of the "may affect" test.

3. In determining that the "may affect" test was met, the Board did so on the basis of its assumption that "it is reasonably likely" that the discipline would adversely affect the supervisor's future conduct as § 8(b)(1)(B) representative. In so doing, it expressly refused to distinguish between the performance of supervisory functions and the performance of grievance adjustment functions during the strike,

[5] The Board thus went beyond its prior *Teamsters* case where *Oakland Mailers* was deemed to be unaffected by *FP&L*. See p. 8, *supra*.

despite this Court's teaching that the Act itself draws this distinction. See pp. 14-15, *infra*, quoting FP&L, 417 U.S. at 811, n. 21. Nor did it explain why the impact on the supervisor is greater when he performs only a "minimal" amount of rank and file work during the strike than when he has performed a greater amount.

4. The Board did not consider the impact of its ruling on the union's use of economic weapons. It therefore failed to heed the teachings of *Labor Board* v. *Drivers Local Union*, 362 U.S. 274, 282-283, and *Labor Board* v. *Insurance Agents*, 361 U.S. 477, 490, which were reaffirmed in *FP&L*, 417 U.S. 805, n. 16, quoted at p. 32, *infra*.

5. The Board again justified its decision as necessary to protect the employer against a "conflict of loyalties", although this Court squarely held in *FP&L* that § 8(b)(1)(B) was not designed to deal with that problem. See 417 U.S. at 805-813, discussed at p. 26, *infra*.

Subsequent cases have adhered to *Hammond Trimount* and its limitation in *Food Employers Council* and to some extent fleshed out what is meant by "minimal".[6] But those cases have done so without any further explanation of

[6] A supervisor's performance of 40%-50% rank and file work which did not represent an increase in his pre-strike bargaining unit work has been treated as "minimal," and the Board has held that it was *unlawful* to discipline him. *Warehouse Union Local 6, etc. (Associated Food Stores, Inc.)*, 220 NLRB 809. See also *Wisconsin River Valley District Council, etc. (Skippy Enterprises, Inc.)*, 218 NLRB 1063 (30%). On the other hand, where a supervisor performed 40% rank and file work and this did represent an increase in his pre-strike bargaining unit work, the Board has held that it was *lawful* to discipline him. *Glaziers and Glass Workers (The Glass Management Association)*, 221 NLRB 509; see also, *e.g.*, *Meat and Provisions Drivers Union, etc. (Quality Meat Packing Co.)*, 224 NLRB 186. However, the Board has in at

the nexus between its definition of "minimal" and its conclusion that supervisor's future performance as a § 8(b)(1)(B) representative would be affected.

One additional departure from *FP&L* merits brief comment. In *United Brotherhood of Carpenters, etc. (Max M. Kaplan Properties)*, 217 NLRB 202, the Board treated the supervisor as an "employer representative" within § 8(b)(1)(B) although he possessed neither of the functions described in § 8(b)(1)(B):

> "We also agree with the Administrative Law Judge's conclusion that Bradshaw was an employer representative within the intent of Section 8(b)(1)(B), notwithstanding the fact that the record failed to establish that Bradshaw was actually vested with authority to act for his employer in collective bargaining or the adjustment of grievances. This conclusion follows by virtue of our rule that persons who are supervisors within the meaning of the Act are employer representatives within the meaning of Section 8(b)(1)(B)." (*Id.*)

Although the cases cited in support of that "rule" (*id.* at n. 1) all antedated *FP&L*, the Board adhered thereto without even passing acknowledgement of this Court's contrary construction of the Act in that case:

> "Further support for the proposition that § 8(b)

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least one case *(Glaziers, supra)* found that disciplining one supervisor who had performed some rank and file work which he would would not have performed but for the strike, was unlawful. Indeed, in one post-*Hammond* case it was expressly declared to be irrelevant whether the supervisors' rank and file work during the strike was greater than that before the strike. *United Brotherhood of Carpenters, etc. (Max M. Kaplan Properties)*, 217 NLRB 202. Despite the apparent inconsistency of some later cases, *Kaplan* has never been expressly disapproved.

> (1)(B) was addressed to a separate and far more limited problem than that of conflict of loyalties dealt with in §§ 2(3), 2(11), and 14(a) is found in the differing scope of the provisions themselves. Section 8(b)(1)(B) purports to cover only those selected as the employer's representative "for the purposes of collective bargaining or the adjustment of grievances," whereas the class of supervisors excluded from the definition of employees in § 2(3) is defined by § 2(11) to include individuals engaged in a substantially broader range of activities. * * * The two groups coincide only with respect to the function of grievance adjustment." (417 U.S. at 811, n. 21.)

II. THE BOARD'S DECISION IS INCONSISTENT WITH THIS COURT'S INTERPRETATION OF § 8(b)(1)(B); BOARD COUNSEL'S THEORY IS INCONSISTENT WITH THIS COURT'S DECISION AND THAT OF THE BOARD.

A. *The Board's Decision.*

The theory of the Board's decision is that disciplining supervisors-members of unions for crossing picket lines is a § 8(b)(1)(B) violation except when the supervisor performs a substantial amount of rank-and-file work behind the line, because if disciplining is permitted, it is reasonably likely that the supervisor, in bargaining or adjusting grievances in the future, will side with the union's views. As we have shown, this theory conflicts with *FP&L* in at least five respects. We now examine the theory in detail, in light of this Court's statutory analysis.

It is important, however, first, to place this case in context. The supervisory members in this case were under no compulsion to join or remain members of the union. The employer was under no compulsion to allow them to be

members of the union. (See *Florida Power and Light*, 417 U.S., at 489-493.) It was plainly a rule of this union—as of almost any union—that members may not work during a strike; the supervisors undertook this obligation by remaining in the union, and the employer assumed the risk that his supervisors would not work during a strike by allowing them to remain in the union. There is no evidence whatever that the union's concern in enforcing this rule was to affect either the manner in which or the fact that the supervisor-members adjusted grievances or bargained. Indeed, there would be no incentive to do so since, with the exception of one disputed group,[7] the supervisor-members neither adjusted grievances for nor bargained with members of the striking union, and the union rule was applied equally to all categories of supervisors.

The question, then, is whether supervisors are, by virtue of § 8(b)(1)(B) of the NLRA, entitled to ignore an obligation they freely assumed, with respect to a matter integrally related to the *raison d'etre* of the union, because of a presumed, indirect effect upon their employers' relationship with their § 8(b)(1)(B) representatives. The exegesis of § 8(b)(1)(B) in *Florida Power* makes plain that they are not.

Petitioners here note, quite correctly, that the *facts*

[7] The disputed group is that of story editors. Even as to them, the grievances they are asserted to "adjust" pertain to credits (A. 109). The collective bargaining agreement makes clear that the union has the ultimate decision on such matters (A. 54, 55, 142-143, 249-275), which basically involve disputes among union members and not between employees and the employer. Thus, there is no incentive for influencing the decision of the story editors on these questions, since the union has direct appellate powers and need not resort to indirect influences.

of *Florida Power & Light* concerned discipline of supervisor-members for crossing a picket line to perform rank-and-file work. They stubbornly insist that, therefore, the case has no application to any other situation. But, the rationale of *Florida Power* plainly goes beyond the facts of that case and squarely controls this one.

While the Court in *Florida Power & Light* did not purport to decide cases not before it, it plainly rejected the thrust of the developments which began under § 8(b)(1)(B) in 1968. For, the opinion explained,

> "[b]oth the language and the legislative history of § 8(b)(1)(B) reflect a clearly focused congressional concern with the protection of employers in the selection of representatives to engage in two particular and explicitly stated activities, namely collective bargaining and the adjustment of grievances. By its terms, the statute proscribes only union restraint or coercion of an employer 'in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances,' and the legislative history makes clear that in enacting the provision Congress was *exclusively concerned with union attempts to dictate to employers who would represent them in collective bargaining and grievance adjustment.*
>
> • • •
>
> Nowhere in the legislative history is there to be found any implication that Congress sought to extend protection to the employer from union restraint or coercion *when engaged in any activity other than the selection of its representatives for the purposes of collective bargaining and grievance adjustment.*" (417 U.S., at 803, 805, emphasis supplied).

Moreover, with respect to the assertion that § 8(b)(1)(B) cannot be so narrowly confined because "such fines clearly interfere with the employer's control over its own representatives," the Court stated decisively:

> "Congress' solution was essentially one of providing the employer with an option. On the one hand, he is at liberty to demand absolute loyalty from his supervisory personnel by insisting, on pain of discharge, that they neither participate in, nor retain membership in, a labor union, see *Beasley* v. *Food Fair of North Carolina, Inc.*, supra. Alternatively, an employer who wishes to do so can permit his supervisors to join or retain their membership in labor unions, resolving such conflicts as arise through the traditional procedures of collective bargaining. But it is quite apparent, given the statutory language and the particular concerns that the legislative history shows were what motivated Congress to enact § 8(b)(1)(B), that it did not intend to make *that* provision any part of the solution to the generalized problem of supervisor-member conflict of loyalties." (*Id.* at 812-813, footnotes omitted.)

Thus, the Court in *Florida Power & Light* held, first, that § 8(b)(1)(B) is confined to coercion concerning the *selection* of § 8(b)(1)(B) representatives, and not their behavior; second, that it is properly concerned only with two discrete functions which some, but not all, supervisors perform; and third, that it prohibits not any action which could conceivably lead a supervisor to act in the interest of the union rather than the employer but only those actions directly related to the two functions with which § 8(b)(1)(B) is concerned—bargaining, and adjusting grievances. Under this analysis, the theory that the discipline here was

in violation of § 8(b)(1)(B) because of a possible carry-over effect on later performance of § 8(b)(1)(B) functions cannot prevail.

The cases cited in the Board's decision rest on the psychological prediction that if a supervisor is disciplined for crossing a picket line to perform supervisory duties, "it is reasonably likely that an adverse effect will carry over to the supervisor's performance of his § 8(b)(1)(B) duties." *Hammond Publishers*, 216 NLRB at 904; *Triangle Publications*, 216 NLRB at 896. Even if this result were a "foreseeable consequence" (*Hammond Publishers*, 216 NLRB, at 903, n. 6) of the union's action, it would have no impact at all on the employer's *selection* of representatives for bargaining or grievance adjustment. The only effect, if there were one, would be on the *manner* of performance of those duties. Since the protection of § 8(b)(1)(B) does not extend to "protection [of] the employer from union restraint or coercion when engaged in any activity other than the *selection* of its representatives for the purposes of collective bargaining and grievance adjustment" (417 U.S., at 805, emphasis in original), the prohibition would not bar the activity here even if the Board's prediction were accurate and, if accurate, were sufficient otherwise to sustain a finding of a § 8(b)(1)(B) violation.

The Court in *Florida Power & Light* did, however, "assume without deciding that the Board's *Oakland Mailers'* decision fell within the outer limits" of § 8(b)(1)(B), and *Oakland Mailers'* involved an attempt to influence not the identity of the § 8(b)(1)(B) representative but the manner in which he interpreted the agreement. We believe that, if the Court were compelled to decide whether *Oakland Mailers'* was properly decided, it would have to conclude that

it was not, for it clearly did *not* involve an attempt to influence the *selection* of the § 8(b)(1)(B) representative.[8] But in this case, as in *Florida Power and Light*, it is possible to "assume without deciding" that discipline of supervisors for the manner in which they bargain or adjust grievances is "within the outer limits" of the statute. For, if *Oakland Mailers* is at the outer limit, this case is clearly beyond that limit, for it does *not* involve discipline for the manner in which § 8(b)(1)(B) functions were performed.

[8] Aside from the language and legislative history set forth in *FP & L*, simple logic compels the conclusion that § 8(b)(1)(B) must be limited to attempts to influence the *identity* of bargaining and grievance representatives. For, of course, it is most of the function of unions, protected by the NLRA, to influence the *positions* of bargaining representatives and grievance adjusters. For example, to take the *Oakland Mailers* situation, if a union working under a contract without an arbitration or no-strike clause went on strike and threw up picket lines to protest the contract interpretation in question, it would not violate § 8(b)(1)(B), but instead, would be engaging in the use of an economic weapon not proscribed at all by the NLRA.

It is interesting in this connection that one of the petitioners maintains "that the instant case is controlled by the Board's decision in *New Mexico District Council of Carpenters* (*A. S. Horner, Inc.*) [177 NLRB 500, enf'd. 454 F.2d 1116 (CA 10).]" (Ass'n. Br., at 22.), and that it is *therefore* unnecessary here to determine whether *Oakland Mailers* was rightly decided. The *Horner* case, was cited by this Court in *FP&L* as one of those cases which went beyond *Oakland Mailers* (417 U.S. at 801). And, in fact, the Board's decision in this case is *not* controlled by *Horner* but goes beyond not only *Oakland Mailers* but that case as well. For, in *Horner*, the supervisor could have complied with the union's demands, and avoided discipline only by resigning from his position permanently. Here and in *Hammond*, the union was demanding only that supervisors not work for a limited time period. Thus, since *Oakland Mailers* is at best, at the "outer limits" of § 8(b)(1)(B), this case is at two removes from those limits, and clearly outside that provision.

The Board attempts to jump this gap by arguing that "where the disciplined supervisor has engaged * * * *only* in the performance of supervisory activities (not limited to grievance adjustment or collective bargaining) * * * there is clearly a violation since it is reasonably likely that an adverse effect will carry over to the supervisor's performance of his § 8(b)(1)(B) duties." (*Hammond Publishers, Inc., supra* at 904.)[9] But there is no attempt to explain, other than the bare assertion, how this prediction is any more reasonable than the possibility of a similar "carryover" effect if the supervisor performs only rank-and-file work behind the picket line. Particularly telling is the fact that the Board maintains that this "carryover" will occur *whether or not* the supervisor performs any § 8(b)(1)(B) functions during the strike. This elision lays bare that the Board has once again lost sight of the fact that § 8(b)(1)(B) is not " 'a general prohibition of a union's disciplining supervisor-members' * * * for acts 'performed in the course of [their] management duties.' " *Florida Power & Light*, at 802.

Indeed, this case demonstrates that the Board's prediction, although it purports to be a permissible inference about human behavior, is actually an attempt to establish a rule of law divorced from any factual considerations. For, here, there is absolutely no evidence that the union ever attempted to discipline, or asserted the power to discipline, supervisors for the way in which they perform

[9] "We believe that the adverse future effect which the Supreme Court referred to as violative in *Florida Power* is as likely to occur, regardless of a union's professed reasons or intent, if a supervisor-member is disciplined after having performed only his normal supervisory duties or if he is disciplined after having engaged in contract interpretation." *Triangle Publications, Inc., supra*, at 897.

§ 8(b)(1)(B) functions. In fact, as explained earlier, both the union and the supervisors are perfectly aware that the union has no interest in how the supervisors perform those functions, because for the most part they do not involve members of this union, and because to the extent that they do the union has control under the agreement over the ultimate decision anyway.

Moreover, even in cases where there is a direct union interest in the supervisor's performance of § 8(b)(1)(B) functions, the "prediction" really amounts to the contention that the discipline can be barred because, while not illegal in itself, it might in the future promote adherence to the desires of the union. The effect is to declare illegal action which Congress has *not* declared contrary to the labor policy.

Teamsters Union v. *Labor Board*, 365 U.S. 667, and *Labor Board* v. *News Syndicate Co.*, 365 U.S. 695, are similar to this case in that the Board's decisions which were reversed relied upon inferences that contract provisions facially valid were illegal because they might encourage or make easier illegal action in the future.

News Syndicate is most directly in point. One of the Board's theories there was that it was illegal to require foremen to be a member of the union without certain safeguards because the foremen would, in hiring, follow the General Laws of the union, which required a preference for union members in hiring. This Court disagreed:

> "We also believe the Court of Appeals was right in concluding that the contract on its face is not unlawful even though the foremen—who are union members—do the hiring. In the first place, the contract (unlike the General Laws) does not require journeymen and apprentices to be union members. In the second place, the provisions of the contract which we have set forth make the foremen '*solely* the employers' agents,' as the Court of Appeals concluded. 279 F.2d at 330. Finally, as we said in *Teamsters Union* v. *Labor Board* decided this day we will not assume that unions and employers will violate the federal law, favoring discrimination in favor of union members against the clear command of this Act of Congress. As stated by the Court of Appeals, 'In the absence of provisions calling explicitly for illegal conduct, the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives.' " (*News Syndicate, supra*, 365 U.S. at 699-700).

The Court recognized that to permit the Board to ban activity which Congress did not outlaw because of a presumption that it would lead to illegal action in the future is not at all an application of the Board's authority to draw rational inferences from a set of facts but, instead, amounts to interdicting behavior which Congress has not outlawed. See also *Teamsters*, 365 U.S. at 699-700. No more may the Board, or this Court, assume that, if attempts to influence § 8(b)(1)(B) conduct directly by discipline of supervisor-members for the manner in which they perform *those* functions *is* illegal, the union will nonetheless attempt to do so, using its past discipline under entirely different circumstances as a lever.

Nor is the inference entitled to any more weight on the ground that, even if the union expressly renounced any desire to influence future bargaining or grievance adjustment, the supervisor, having once felt the power of the union, would be likely to act in a manner he perceives they

would prefer. The Board's reliance on *Radio Officers* v. *Labor Board* 347 U.S. 17 for the legitimacy of its inference that the supervisor will be adversely affected is not only misplaced, it is self-defeating. For it makes it all the more plain that the method of decision is the same as that which was rejected in *Teamsters* and *News Syndicate*. In those cases, the Board's argument was based on what it believed the employees (in both cases) and the supervisors (in *News Syndicate*) might think. And it heavily relied on *Radio Officers* to justify that reasoning, and to pretermit review thereof. The parallel between the rejected Board argument in *News Syndicate*, and its reasoning in *Hammond Publishers*, 216 NLRB 903, n. 6, is particularly striking:

> "In sum, in view of the history of the ITU's efforts to maintain closed shop conditions and the role played by the General Laws in this effort, the Union and the publishers had reason to believe that, without specifying what provisions of the Laws were deemed illegal and thus excluded, the employees and the foremen would tend to view them as all operative, including the closed shop provisions, at least until an appropriate tribunal should rule otherwise. And the conduct of the hiring in this case shows that the contract was in fact so interpreted. Since a person is deemed to intend the foreseeable consequences of his conduct (*Radio Officers' Union* v. *National Labor Relations Board*, 347 U.S. 17, 45), the legal effect of the General Laws clause is thus the same as though the ITU and the publishers had specifically set out closed shop provisions in the contract."[10]

[10] Brief for the National Labor Relations Board, No. 339, Oct. Term 1960. See also the Board's brief in *Teamsters Union* (Nos. 64 and 85, Oct. Term 1960), particularly at 38-39 and *id.* n. 19.

Moreover, in the present context, the Board's inference of an adverse impact on the supervisor really amounts to nothing more than a restatement in other words of the conflict-of-loyalties approach definitively rejected in *Florida Power & Light* as beyond the scope of § 8(b)(1)(B). That is, it is merely an assertion that the supervisor might consider when discharging § 8(b)(1)(B) obligations in the future the fact that he has pledged adherence to the union.

The Board's decisions recognize that at bottom this is all they are saying, but assert that this Court did not mean what it clearly said regarding the lack of pertinence of the "conflict of loyalties" problem to § 8(b)(1)(B). For, in *Hammond Publishers*, the Board said:

> "We do not believe that this analysis conflicts in any way with the Supreme Court's treatment of the issue of a supervisor-member's conflict of loyalties. The Supreme Court stated that an employer may not permit a supervisor to become a union member and yet continue to be able to demand "absolute loyalty" from that supervisor. We interpret this to mean that an employer who permits his supervisors to become union members may no longer demand the loyalty of these supervisors if they cross a picket line and in effect, substitute their services for those of the rank-and-file employees. In this same regard, however, we do not believe that the Supreme Court's decision is so broad that it means that an employer surrenders his right to require the loyalty of these same supervisors when they cross a picket line and thereafter

perform substantial supervisory functions * * *." (*Id.* at 905 [11]).

But the opinion clearly *is* "so broad". For, it identifies the Congressional policy with regard to loyalty of supervisors as addressed entirely by §§ 2(11) and 14(a) of the Act, and not at all by § 8(b)(1)(B). (*Florida Power & Light*, 417 U.S., at 807). And it makes plain that the policy of those sections is

> "essentially one of *providing the employer with an option*. On the one hand, he is at liberty to demand absolute loyalty from his supervisory personnel by insisting, on pain of discharge, that they neither participate in, nor retain membership in, a labor union, * * * Alternatively, an employer who wishes to do so can permit his supervisors to join or retain their membership in labor unions, resolving such conflicts as arise through the traditional procedures of collective bargaining." (417 U.S., at 812-813, emphasis supplied.)

Thus, the very point of *Florida Power & Light* in this regard is that an employer who has not exercised his option to refuse to permit union membership of supervisors *has* relinquished his right "to demand absolute loyalty" except insofar as he resolves any conflict of loyalty problems through bargaining. For,

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[11] See also *Triangle Publications* 216 NLRB at 897: "Therefore, under our view of *Florida Power* and its definition of strikebreaking, the only so-called 'price' that an employer must pay for permitting a supervisor to be a union member, is that the supervisor-member cannot, with immunity, cross union picket lines to perform rank-and-file work."

> "inherent in the option afforded the employer by Congress, must be the recognition that supervisors permitted by their employers to maintain union membership will necessarily incur obligations to the union." (*Id.*, at 813 n. 22).

These obligations may be felt or given effect, in exercising a § 8(b)(1)(B) function, by a supervisor who has once been disciplined by the union for crossing a picket line, but they may also be felt—indeed, are more likely to be felt—by one who has never been so disciplined because he took those obligations seriously and did *not* cross the picket line.

We note finally that there is also considerable similarity between the Board's decision herein and the legal theory which was rejected in *Labor Board* v. *Insurance Agents*, 361 U.S. 477. Here, as there, the Board inferred from a use of an economic weapon by a union that it would have a particular consequence which was an essential element of the unfair labor practice charged. Here, that conduct is the disciplining of a supervisor who is a union member for crossing a picket line during a strike, from which the Board infers that the supervisor would be adversely affected in his future functioning as the employer's grievance adjuster or bargainer. In *Insurance Agents*, it was the use of certain harassing techniques in the course of a strike from which the Board inferred that the union "was only going through the 'motions' of bargaining," (*id.* at 482, n.5), thereby violating § 8(b)(3). Neither inference was based on any demonstrated, or even asserted, industrial experience. As the Trial Examiner in *Insurance Agents* put it, with approval by this Court (*id.*, at nn.4 & 5), the Board there indulged in "mental pole vaulting with only a presumption as a pole." So here. Indeed, the Board, is so casual about finding a vio-

lation that it does so without regard to whether the supervisor's actual duties involve § 8(b)(1)(B) functions, or § 2(11) functions, or other work, and if so, in what proportions either during the strike or thereafter (that is, at the time when, according to the Board's theory, the discipline would have its adverse effect). Instead, the Board has erected a *per se* rule that the union violates § 8(b)(1)(B) whenever it disciplines a supervisor crossing a picket line if he performs less than 40-50% rank- and file-work during the strike. It is such such *per se* rules of illegality which this Court has repeatedly struck down, for these amount to a revision of the balance struck by Congress.[12]

B. ***Board Counsel's Theory***

The Board's brief advances an entirely different theory for finding a violation of § 8(b)(1)(B). It argues:

> "The obvious purpose of such actions was to force the hyphenates to honor the Union's picket lines and thus to cease performing their 'supervisory or management functions,' necessarily including grievance adjustment and collective bargaining, for the duration of the strike. Hence, if the hyphenates had succumbed to the Union's threats of discipline and other pressure and had refused to cross the picket lines, the Employers would have been deprived of their chosen representatives for the performance of those functions for the duration

[12] See, in addition to *Insurance Agents* and *Teamsters Union*, *supra*, *American Ship Building* v. *Labor Board*, 380 U.S. 300, 318, and, in a sense, in *FP&L* itself. The Board's method is precisely the opposite of the "totality of circumstances" approach which this Court recently endorsed in *NLRB* v. *Pipefitters*, 429 U.S. 507, 523-524; see also *id.* at 521, n.8, noting that the Board had disavowed "a mechanical test."

> of the strike, no less than if the Union had directly pressured the Employers into removing those representatives from those duties.
>
> Moreover, as for those hyphenates who defied the Union, crossed the picket lines, and were disciplined, the likely effect of such discipline is to deprive the Employers of their collective bargaining or grievance adjustment services in the future. If a union member who is a supervisor is suspended, fired, or otherwise disciplined for crossing a picket line during a strike to perform collective bargaining or grievance adjustment duties, he necessarily will think twice about crossing the union's picket lines in a future strike though only the same duties are required." (Bd. Br. 16-17, footnotes omitted.)

It is obvious that this line of reasoning differs materially from that of the Board decisions. According to the Board's brief, the nexus between the union's discipline and § 8(b)(1)(B) is that the supervisor will simply be unavailable for the purpose of grievance adjustment or other "supervisory or management functions" during the strike, if the threat of discipline is succesful, and that with respect to those who are disciplined for crossing "the likely effect of such discipline is to deprive the Employers of their collective bargaining or grievance adjustment services in the future" (Bd. Br. 16). According to the Board's decision, the nexus is based on an inference of a different future consequence, the impact on the supervisor's performance of his functions in a non-strike situation rather than his total unavailability in the event of a future strike. That, as we have seen, was the Board's holding in the *Hammond Publishers* and *Triangle Publications* cases which were incor-

porated by reference in its decision here (Bd. Pet. 13a, n. 6).[12]

It is plain that Board counsel once again are supplying their own rationalization to justify the Board's decision on appeal, see *Labor Board* v. *Metropolitan Insurance Co.*, 380 U.S. 438, 444; *NLRB* v. *Food Store Employees*, 417 U.S. 1, 9. But the situation is considerably worse than that confronted in those cases, because counsel's theory is flatly inconsistent with that of the Board. Under counsel's theory, a § 8(b)(1)(B) violation would be made out if the supervisors' refusal to cross the picket line because of the threat of discipline resulted in their unavailablity ot resolve any grievance. Thus, there would be a violation even if the supervisors performed more than a "minimum" of rank and file work—that is, even if they performed more than 50% of such work in addition to resolving grievances. But the Board would not find a violation under those circumstances. To that extent, the Board's rule at least gives some effect to *FP&L*, whereas counsel's theory would eviscerate that decision entirely.

Thus, the theory of the Board's counsel is not entitled consideration at all at this juncture, for it is not the premise of the Board's decision and indeed leads to results inconsistent with that premise. But, even if it were considered, the result in this case would be the same. For that approach

[12] It is true that the ALJ found a violation on the basis of reasoning similar to that advanced in the Board's brief. Because of the repugnancy between that theory and the Board's *Hammond*, *Triangle* and *Food Employers Council* decisions, it cannot even be contended that both theories were accepted by the Board in deciding the case. Of course, even if the two lines of argument could somehow be reconciled, the question would remain whether the Board itself had adopted by silence an alternative ground for decision to that which it had articulated at length in the contemporaneous decisions which it cited as controlling authority.

is no less at odds with *FP&L* than that upon which the Board's decision actually rests.

One flaw in that analysis is apparent on the face of the Board's brief. For, to take account of the fact that there is not an iota of evidence that the supervisors here did, or were likely to, bargain or adjust grievances during the strike, the Board counsel asserts that this

> "is immaterial. * * * Because the Act proscribes restraint or coercion in the *selection* of representatives, the legality of the union's discipline should not be made to turn upon the wholly fortuitous (and, for the union, wholly irrelevant) occurrence of an actual grievance among non-striking employees." (Bd. Br. at 18-19, emphasis supplied.)

Of course, the true reason it is "wholly irrelevant" to the union whether or not any § 8(b)(1)(B) activities occur during the strike is that the union is not attempting to "restrain or coerce" the employer (or the supervisor) with regard to those functions, and would impose the same discipline if no § 8(b)(1)(B) functions were performed behind the line. Board counsel maintains that motivation is not dispositive here. But, by insisting that not only need there be no proscribed intent, there also need be no proscribed *effect* either, counsel seems to be asserting that the case need not be proven at all. Before an employer can claim that he has been deprived of his selected representative for certain purposes for a limited time period, he should have to show that he *had* selected that representative to perform those functions during that time period. In any event, counsel's theory would make a mockery of *Florida Power & Light*. For, while it does not appear from that opinion whether the supervisors performed any non-rank-and-file work, there is absolutely no indication that they did, or

could have done, *no* bargaining or grievance adjustment when they crossed the picket line. Under counsel's theory, there would be a violation as long as the supervisor could perform *some* § 8(b)(1)(B) function if he crossed the picket line. Thus, a violation of § 8(b)(1)(B) could be found in *any* future case concerning discipline of any supervisor who ever performs any § 8(b)(1)(B) functions for crossing a picket line—even a case precisely the same as *FP&L* on its facts.

Moreover, the notion that the discipline of supervisor-members who cross picket lines "restrained or coerced" employers in the selection of their § 8(b)(1)(B) representatives during that strike entirely fails to come to grips with the fact that the same effect on the employer may result without discipline. It has not been contended by anyone that it is unlawful for a union to erect a picket line which supervisor-members may, of their own volition, refuse to cross to perform even § 8(b)(1)(B) duties, or that the union may not request them to honor the picket line in recognition of their union obligations.[14] When this happens, the employers

[14] Indeed, *Florida Power & Light* noted:

> "In light of the fact that 'Congress has been rather specific when it has come to outlaw particular economic weapons on the part of unions,' *NLRB* v. *Drivers Local No. 639*, 362 U.S. 274, 282-283 (1960), the admonition against regulation of the choice of economic weapons that may be used as part of collective bargaining absent a particularized statutory mandate is particularly apt in this context. *NLRB* v. *Insurance Agents*, 361 U.S. 477, 490 (1960)." (*Id.*, at 804, n. 16.)

To suggest that unions may not request, and receive, the support (at their peril) of supervisor-members in an economic strike, whether that support entails refusing to perform rank-and-file work or refusing to work at all, would certainly be to suggest the regulation of an economic weapon Congress has not seen fit particularly to interdict.

may be deprived of their services for the duration of the strike. If the employer is being "coerced" or "restrained" at all with regard to his selection of § 8(b)(1)(B) representatives for the duration of the strike, this "coercion" comes about simply because of the picket line and the strike, and not because of the discipline. § 8(b)(1)(B) addresses restraint and coercion of *employers*, not *supervisors*. Yet the only difference between the voluntary and involuntary refusals to cross a picket line is its impact on the supervisor.[15] *They* may be said to be "restrained or coerced," but the effect on the employer is the same whether the respect for the picket line is voluntary or not.

The Board argues further that even if the attempt to enforce withdrawal of services by fines with regard to *this* strike is not independently a § 8(b)(1)(B) violation, the fact that supervisors thus disciplined may decline to work and perform § 8(b)(1)(B) functions during the next strike, if there is one, would make it so. Much of what has already been said disposes of this contention, by demonstrating that enforcing withdrawal of supervisors' services during a strike does not constitute an § 8(b)(1)(B) violation at all. But in addition, it must be recognized, first, that the employer has the option of requiring supervisor-members to withdraw from the union after the strike is over and thereby to prevent this possibility.[16] Further, if the asser-

[15] If supervisors honor the picket line they may be discharged by the employer with impunity; if they do not do so, they may be discipined by the union. This may well place the *supervisors* in an unfortunate situation, but it is one with which the Act is entirely unconcerned, because Congress chose to leave them unprotected. See *FP&L*, 417 U.S. at 812, n. 22, and *Beasley* v. *Food Fair of North Carolina, Inc.*, 416 U.S. 653.

[16] Indeed the existence of this option would appear to be sufficient to dispose of the *Hammond Triangle* theory as well.

tion is that the union will use the discipline in this strike, not directed at performance of § 8(b)(1)(B) functions to coerce supervisor-members in the future with regard to crossing picket lines only to bargain or adjust grievances, then the answer is that if such future action would be illegal, it may not be presumed that the union will engage in it. (See pp. 22-24, 27, *supra*). Finally to the extent that this amounts to a prediction that disciplining persons who perform only supervisory duties may lead that person, regardless of any union attempt, to withhold §8(b)(1)(B) services in the future, we are back yet again to the confusion between general supervisory duties and the particular § 8 (b)(1)(B) functions which pervades the Board's whole approach. That is, the only reason why this "carry-over" is more likely than a "carry-over" where the discipline relates only to performance of rank-and-file work is that the *Board* believes that the performance of § 8(b)(1)(B) duties in the future is inextricably intermeshed with maintaining complete employer control over all supervisory functions, not because Congress so legislated or because the supervisors themselves will see this special connection. For the supervisor, and for the employer, the problem will remain the same in a present strike as in a future strike and will remain the same whether some supervisors are fined during this strike or not. That problem is that conflicting loyalties are inherent in the situation, and that supervisors in a strike situation are forced to choose. The choice they make, and the fact that they must choose, is no part of the problem addressed by § 8(b)(1)(B), as *Florida Power & Light* so clearly states. The Board has erred in attempting to ease the dilemma by reading into this part of the statute purposes and concerns which it was never intended to address.

It is worth remembering, in conclusion, that § 8(b)(1)(B) was represented by its Congressional supporters to be "not * * * of tremendous importance." (93 Cong. Rec. 3837, quoted in *FP&L*, 417 U.S., at 804), and that

> "[w]hile * * * the legislative accommodation adopted in 1947 [with regard to supervisors as members of unions] is fraught with difficulties of its own, "[i]t is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute." *Colgate-Palmolive Peet Co.* v. *NLRB*, 338 U.S. 355, 363, 94 L Ed 161, 70 S Ct. 166 (1949)." (*Florida Power & Light*, 417 U.S., at 811.)

If § 8(b)(1)(B) had the effect of prohibiting unions, for whatever reason from enforcing with regard to any of its members prohibitions upon working during a strike, it *would* be "of tremendous importance." For, it would amount to the declaration that the national labor policy provides that even though supervisors may be members of unions and obtain all the benefits thereof, they cannot be required to support the union in seeking, through the use of economic weapons central to its power, the terms and conditions of employment it seeks. If this one-sided resolution of the conflict-of-loyalties problem inherent when supervisors are permitted to be union members were intended, one would certainly expect some glimmer of a suggestion in that regard in the language, legislative history, or first twenty years of interpretation of § 8(b)(1)(B). There is none. The Board may be troubled by the difficulties created when a supervisor is placed in such a situation, but it is not, as this Court has already stated, permitted to convert a minor and limited provision into a major limitation on union economic weapons. *FP&L*, 417 U.S. at 805, n. 16.

CONCLUSION

For the foregoing reasons, and in order to assure that in the future the NLRB exercises conceptual faithfulness to this Court's opinion, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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